IMT Nuremberg Archives

H – 212

International Court of Justice

H0212-0002

5-95

Official Transcript of the International Military Tribunal in the matter of the United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics, against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 23 August 1946, 1000-1700, Lord Justice Lawrence presiding.

THE MARSHAL: May it please the Tribunal the defendants Hess and von Papen are absent.

DR. SERVATIUS: Mr. President, your Honors;

Yesterday I had spoken about the individual war crimes and now I shall turn to the activities of the Einsatzstab Rosenberg which begins on page 39 of the written script.

The activity of the Einsatzstab Rosenberg was no official Party matter. As the defense counsel of the defendant Rosenberg has already explained, this was an order of Hitler's giving personal instructions to Rosenberg and not to a Party agency. This is shown in document 136-PS, i.e. a letter of Hitler's of 29 January 1940, and in the Fuehrer decree of 1 March 1942, document 149-PS. It is confirmed by testimony given before the Commission by the witness Dr. Mueller and by Graf von Roedern. An affidavit of the witness Kuenzler (No. 58-A) is to the same effect, stating that the officers of the Reichs Treasurer knew that this order was intended for Rosenberg personally.

And indeed, the Einsatzstab Rosenberg was not a Party organization. The members were scientists and specialists who had nothing to do with the Party, and who in many cases, were foreigners. All had been recruited for the emergency service obligation.

The leader of the Einsatz in Paris was not a political leader. This special section was distinguishable even outside the Party by a special uniform.

From the financing of the Einsatzstab Rosenberg through the Reich Treasurer of the Party, the prosecution concluded that political leaders were also concerned. Document 145-PS shows that it was only alone, and that the Rosenberg Ministry as a State office had to bear the costs. This was

H0212 - 0003

corroborated by the witness Kuenzler, a leading official in the Party finance administration, in affidavit 58-A. The witness Dr. Mueller, consultant for matters of private property, testified to the same effect before the Commission. (Transcript page 1614.)

To prove direct participation of the political leaders, the prosecution referred to document 071-PS, according to which the final settlement of the confiscations which had been carried out by the Einsatzstab Rosenberg should be made by the Gauleiters. The preface of this document, however, shows that it applies only to the confiscations within the German territory of property belonging to people of an "idealogical opposition". It is connected with document 072-PS which merely contains a proposition in connection with the church question. This proposition does not suggest that the Gauleiters confiscate things. It merely states they should look after them until their seizure by a more competent authority, in order to avoid anything getting lost.

These documents can not refer to lootings abroad since no Gauleitungs existed there to which any such instructions could be given.

Finally, may I point out that no orders had been given as to the ultimate destination of these cultural values. The witnesses Mueller, transcript page 1629, and Kuenzler, affidavit 58-A, stated before the Commission, that these objects should be dealt with in the peace negotiations. There remains the action concerning furniture (Moebelaktion) mentioned by the prosecution through which the furniture of 70,000 householders in France was transferred. This was an action of the East Ministry, and was carried out by its own personnel.

In reference to prisoners-of-war, other defense counsel have already made the juridical situation clear, and have shown that the political leaders were in no way concerned with these prisoners.

H0212-0004

But the Prosecution have confronted the political leaders with document 656-PS, US exhibit 339, which is a directive of the OKW from the year 1944. It gives the guard details the right of self defense, in view of the request of the enemy propaganda to prisoners-of-war asking them to use force. In cases of extreme emergency, use of arms is permissible. The political leaders are in no way connected with this directive and its execution.

I have defined in detail my attitude with reference to foreign workers when dealing with them as defense counsel for Sauckel.

The witness Hapfauer has testified on 11 July 1946 before the Commission and on 31 July 1946 before the Tribunal regarding the actual facts. I further refer to affidavits 55a, to 55d, and to affidavit 55, which comprises 15,000 statements under oath. They give a reliable picture of general living and working conditions of these foreign laborers. Everything speaks against a systematic program of negligence and mistreatment or a general approval of the conditions as they were alleged.

It is necessary to define a special attitude with reference to document EC-63. This is a directive of the Peasants Union of Baden, of 6 March 1941 regarding treatment of Polish agricultural workers. It is an individual measure and it originates from a time prior to the unified settlement of labor allocation. It does not originate from a Party office, the Peasants Union being an independent professional organization outside the Party formation. The directives has been rescinded in view of the subsequent regulations for all foreign workers.

It has been firmly established on the basis of the evidence, however, that this directive in practice was not carried through with the approval of the political leaders. Here reference is made to the testimony of a number of political leaders from the Gau Baden, which has been collected in affidavit P.L. number 68. I further refer you to the testimony of the witness Hohr (peasants Union - Bavaria), who was heard before the Commission on 3 July,

H0212-0005

1946, the testimony of Gauleiter Wahl for the Gau of Schwaben who was heard before the Commission on 15 July 1946, and to the testimony of the Ortsgruppenleiter Wegscheider.

As far as interruption of pregnancy where foreign female workers were concerned, it is shown from the confidential information of the Party Chancellory of 9 December 1943 (Document P.L. No. 98), that such interference has only been carried through at the express wish of the person concerned. The list annexed to the document also shows that an interference was the exception (compare with affidavit Hahler 56a).

The accusations of the lynching of fliers who made emergency landings is the last war crime which is particularly incriminating the political leaders.

We are not concerned here with whether the attacks of fliers against the civilian population were admissable, or whether the rage of the population was justified, but only with the fact that a killing of such fliers by the population was permitted without a previous judgment. It remains now to clear up the question --

THE PRESIDENT: Dr. Servatius, you are passing from the treatment of foreign workers to another part of your speech. The Tribunal would like to know whatyour case is with reference to the treatment of foreign workers by the political leaders, and whether you contend that they did not assist in placing and controlling the laborers who were brought to Germany under the forced labor program.

DR. SERVATIUS: I am denying that they participated in the rambling up and bringing up of those laborers. They only had the duty of supervising the duties and welfare, the welfare of these workers and were concerned to see it was supervised.

THE PRESIDENT: You agree then that they undertook the dut y of supervision of the laborers?

DR. SERVATIUS: Yes - but that they fulfilled that duty. After all, in the case of Sauckel, a number of Gauleiters had been heard on the subject, all of whom have confirmed the fact

H0212-0006

that they were authorized to act on behalf of the laborers and took care of this welfare question, that was dealt with in the case of Sauckel. I am just given to understand I didn't understand your question. Are you stating about the guarding of these workers? Is it about the guarding?

THE PRESIDENT: The words I used were whether you contend that they had not assisted in placing and controlling the laborers who were brought to Germany under the forced labor program.

DR. SERVATIUS: If that was the question, then my answer can remain in the form I have given before.

THE PRESIDENT: You do agree that although you say they did not assist in the rounding up, I think that was the word you used, or the bringing up of the laborers to Germany, they did assist in the supervision and controlling of the laborers who had been brought to Germany?

DR. SERVATIUS: Yes, they had the supervision, the duties in that capacity for the labor employment. They had to control the question whether the Labor Front and the work Leaders were taking care properly of their duties. They had no direct responsibility, only an additional duty. On Sauckel's behalf, checking to see whether his instructions were being fulfilled.

THE PRESIDENT: Are you contending that they did not know the laborers came involuntarily?

DR. SERVATIUS: That I am not denying. I admit the Gauleiter had to know and probably did know that the workers came because they had been compulsorily called up.

THE PRESIDENT: Thank you. I think you got to the bottom of page 44 or near it.

DR. SERVATIUS: I was dealing with the question of lynching.

THE PRESIDENT: Page 44, in the English.

DR. SERVATIUS: Page 44, that is where I got. I said it remains now to clear up the question whether such war crimes were generally tolerated and approved of by the political leaders.

The Prosecution has submitted 5 documents in this connection.

H0212-0007

Firstly, the directive of 13 March 1940, from the Deputy of the Fuehrer Hess, document 062-PS. It concerns a secret directive regarding the behavior of the population towards crashed airplanes and towards parachutists, and, with reference to the latter it contains a directive that they are to be either arrested or "made harmless".

In order to understand those words which have become doubtful today, one has to firstly consider that we are here concerned with enemy soldiers who have been ordered to carry out a combat action. It is hardly possible for the civilian population to arrest them and we therefore have to understand the expression to mean that other methods for safety have to be taken in order to avoid damage.

For the purpose of the interpretation, it is essential to note that during the year of 1940, in view of the then prevailing air situation, one could only theoretically count on such happenings; it was a preventative measure which, according to the document itself, followed the French directives. The passage in the document asking for special secrecy can be perhaps explained by the fact that the civilian population received a directive which could cause them to be combatants. Actually no events originating from that time where a violation of international law was committed against flyers became known. Furthermore, the "Confidential Information of the Party Chancellory" of 4 December 1942, speaks clearly against such a measure. It firmly rejects any measures against flyers, as had been the practice in Japan.

The later documents, however, openly approving and inciting the war crimes, have to be judged differently. It is further necessary to examine the documents and to determine how far the political leaders had knowledge in general or were participants.

Himmler's order, dated August 10, 1943, Document R-110, is addressed to the higher SS and Police Chief. According to this, the competent Gauleiter had to be informed, but competent were

H0212-0008

only those who held official functions, that is, Reich Defense Commissars and Reichstatthalter. Those functions had nothing to do with political activities.

The Party Chancellory would have been competent for such an incitement. Thus the conclusion is to be drawn that not all Gauleiters had been informed and in any case no Kreisleiter nor any other subordinate party office. I draw your attention to the evidence of witness Hoffman during his testimony of July 2 1946.

The other Gauleiters too have confirmed that they were informed of Himmler's directives to the Police Officers only in that capacity as Reich Defense Commissar.

Bormann's circular of May 30, 1944 (Document Number 067-PS) was destined to inform all political leaders that they should tolerate the lynching of fliers.

THE PRESIDENT: I am not quite sure that I understand what your argument is there. Is your argument that in the Document 110, the competent Gauleiters does not include all the Gauleiters?

DR. SERVATIUS: Only those who were with the Reich Defense Commissars and Reichstatthalter. Only they give knowledge or instructions in their capacity as agents of the State. Other Gauleiters did not have that and they were not all involved. The Gauleiter in his capacity of a Reich Defense Commissar and Reichstatthalter did not inform his subordinate.

THE PRESIDENT: Do you say that the Gauleiters ceased to have control over their Gaus unless they were appointed Reich Defense Commissars and Reichstatthalter?

DR. SERVATIUS: These agencies were separated, and instructions only reached some, nor the Kreisleiters. In the prescribed official channels --

THE PRESIDENT: That is not the answer to my question. What I asked you was are you saying that the Gauleiters who were not Reich Defense Commissars or Reichstatthalter had ceased to hold

H0212-0009

any authority in the Gaus of which they were Gauleiters?

DR. SERVATIUS: No. I only want to say that the service channel would mean the passing through of these instructions. I have quoted witnesses who testified that the Kreisleiters did not receive any knowledge of these instructions. It is that with which I am going to deal with next.

H0212-0010

THE PRESIDENT: Go on.

DR. SERVATIUS: It was caused by Goebbel's newspaper articles of the preceding day, in which he addressed the population directly.

For the defense it is essential to discover in which way the political leaders cooperated, and whether these war crimes had been permitted everywhere with the consent and general approval of the political leaders. This was certainly not the case. On the contrary three of the Gauleiters concurred by testifying before the Commission that they realized the possible repercussions of the circular, and that they did not forward it to the Kreisleiters contrary to the orders given them. That is by witness Hoffman, witness Kauffmann, and witness Wahl. The same was testified by the Gauleiters of Mecklenburg, Weser-Ems, and Tyrol (Affidavits 61-C, 61-H and 61-G).

The fact that most of the Kreisleiters had no knowledge of the Bormann decree, indicates that the same was done in other Gaus. So far as they received the decree, they did not translate it into practice, and did not forward it because of its dangerous nature. I quote the following witnesses: Meyer-Wendeborn, Kreis Oldenburg; Kuehl, Kreisleiter Ost-Hannover; Biedermann, Gauleiter office of Thueringen; Brueckmann, Kreisleiter Hesson-Nassau; Naumann, Kreisleiter, Saxony; Ever, Gau Westmark; Haus, Kreisleiter Wetzler.

The above mentioned witness, Hoffman, belongs to those witnesses who confirmed that they did not forward the decree. An announcement concerning the re-admissibility of lynching was made on the 25 February 1945, that is, nine months later. It is remarkable for the political leaders that this witness has hesitated such a lont time before acting according to the desires of Bormann and Hitler. During his testimony before the Commission, the witness declared that he had withdrawn his draft, and that the announcement was made without his knowledge. In fact, in his Gau, the order has never been carried out, which is proved by affidavit of Karl Scholtis, Ortsgruppenleiter, PL-61A.

As to the testimony of the Gauleiters and Kreisleiters, it is to be remarked that only a few witnesses have been examined, and that only a few affidavits could be taken out of the mass of material available. However, it is no doubt established that in general the political leaders did not follow

H0212 -0011

the criminal suggestions. In spite of the embitterment, despair, and misery at the destruction of many human lives, violation of the rules of warfare were prevented.

Affidavit 61 includes approximately 11,000 individual statements. These statements not only bear witness to a passive rejection of dangerous methods, but in many cases confirm positive steps taken to protect the fliers against the excited population.

Finally, the Political Leader Corps has been accused by the Prosecution of having worked through the foreign organizations of the NSDAP, as a fifth column abroad. Evidence for this has neither been produced during the hearing of witnesses before this Tribunal on the occasion of the hearing of the case of Defendant Hess, nor during the hearing of evidence before the Commission. The Foreign organizations merely served in drawing together of the party members of German citizenship, living abroad and it was meant to maintain in them the understanding for German Nationalism. It was expressedly prohibited for members of the Foreign organizations to make propaganda for the National Socialist idea amongst the inhabitants of the host countries, and to cooperate with political groups abroad even if those were representing National Socialist or Fascist ideas. For that reason, it was also forbidden for them to collaborate with the American-German union; this prohibition was in fact strictly observed. Comparing examination of witness von Roedern.

On the strength of the experiences, made by Germans living abroad during the first World War, they were as testified by witness von Roedern on the occasion of his examination before the Commission against policy of expansion. They had no other goal, but that of maintaining peace with every means, and for that reason, it was out of the question that they were active in a fifth column. Members of the Foreign organizations were prohibited from any collaboration with the German Secret Service by order of their Chief Bohle. If individual members of the Foreign organization have infringed this order, then they did not do so on behalf of the Foreign organizations, but against its explicit instructions. This becomes apparent also from the fact that the foreign states concerned, for instance England, have never prohibited the

H0212-0012

Foreign organization in spite of such instances; to the contrary, the legal character of the Foreign organizations was repeatedly and expressly recognized by foreign states. Finally, the fact that the Foreign organizations have never exercised activities as a fifth column becomes apparent from the fact that they remained operative in foreign countries until the end, even at a time when no difficulties of a diplomatic nature could have arisen for these states if they had prohibited the foreign organization.

I have commented on the individual points of the charges, the question now is what is the over-all picture that results? It is to be examined whether the cases investigated were individual occurrences, or whether they were held together by a mutual bond, and thus indicate the criminal character of the political leaders.

The prosecution has pointed out that it has presented particularly expensive evidence. One must admit on the basis of the occupation of all of Germany, and the activity of the authorities, the last nook and cranny has been searched and the evidence has been brought here, but for that very reason the material surprises one on closer examination because of its scantiness; it is shown that it does not cover the field of the application of the prosecution.

Not partial evidence but only systematic evidence can bring conviction that occurrences which happened once at one place necessarily happened constantly in all other directions. The individual occurrences can be brought into a system only by the "Conspiracy" which demonstrates the criminal character, but it is a conspiracy which is to be proved by the incoherent facts.

The documents of the prosecution are contradicted by the testimony of the defense witnesses.

The Prosecution has objected to the credibility of the witnesses, that they are all witnesses on their own behalf.

They were reproached for having remained in office until the end.

If one were to follow this line of thought, the possibility of legal hearing of the members, guaranteed by the Charter, would be void of meaning. The witnesses are not appearing on their own behalf, but as witnesses with a general knowledge of occurrences, and conditions which can only be cleared up

H0212 - 0013

through the members of the organizations themselves. Their credibility must be shown by the uniformity of many testimonies.

One can not in general reject the testimony when the expressed purpose of the proceedings is to eliminate evidence on those points, and later proceedings. There every individual would be able to bring witnesses for the correctness of his testimony, but too late. If the testimony is to be untruthworthy, this must be proved in the indicidual case; that evidence can not, however, be given by having a witness draw conclusions which he can not draw correctly, because he lacks insight and knowledge. Only a few witnesses were heard before the Commission and the Tribunal.

The testimony of individual witnesses has no compelling force to establish the criminal character of an organization. The witness can generally give little testimony about conditions as a whole, which are under examination, even if he has an extensive knowledge of things, and even his testimony can be only gragmentary.

Only a comprehensive inquiry can bring clarification. The Prosecution had a good opportunity for this in the camps, that all internees were examined is shown by the individual trials which were carried out as a result of this examination, but crime as a general phenomenon could not be established.

The defense for its part gathered together all available witness material through access to a sort of Enquete. In the proceedings before the Tribunal Enquetes were admitted in the form of Government reports. To prove general occurrences, they in fact do not seem superfluous.

The weaknesses of the Enquete are well known; their main danger lies in the choice of witnesses. In the present case, however, the circle of witnesses is limited to camp inmates. The affidavits of approximately 38,000 persons which were submitted are not a selection from the camps, but a digest.

The second difficulty of the Enquete is the impossibility for outsiders to check the statements, because of their extent. Under the prevailing circumstances, however, this checking is assured; the circumstances of all witnesses from the camps are know and confirmed through investigations. The

HO212 – 0014

statements of the witnesses can be checked at any time. That such an examination is possible is shown by the establishment of De-Nazification Chambers.

If one denies the value as evidence of the testimony of witnesses, and the affidavits in a lump, without having examined the real value, this procedure can not lead or turn to any real result.

H0212-0015

If the testimony of witnesses are to be given the least evidential value, then the uniformed picture is destroyed on which the prosecution has based their plea.

Another question which arises is whether through the responsibility on the part of all political leaders, based on their position or based on their knowledge and approval, a joint responsibility can arise.

The practical question is whether a Kreisleiter in the country is jointly affected through occurrences in another local group in the city and whether someone who had been a political leader in 1930 is effected by events which have occurred during the war. The question is whether a Blockleiter will suffer the effects caused by the circumstance that on the basis of secret instructions human beings were removed by Coup de Grace.

It appears obvious that differences must be made.

First of all, that is the difference with regard to time.

The conspiracy, only inter-connected through individual actions, can according to the statement of the prosecutor of the Soviet Union not be proved with certainty before the year of 1933. According to Appendix A of the Indictment of the Organizations, the Reichs Government is held responsible for a conspiracy only after 1934. Only one of the Documents used against the Political Leaders refers to the year 1933 (PS-374). It deals with a local anti-Jewish boycott.

All other documents concern events after 1938. Themajority of Documents only deals with war-time.

When ascertaining the incriminating period, no individual case can be decisive, but only events which at the time when they took place bore a general character.

If the Prosecution maintain their plea for the entire period of the existence of the party, then I believe that this position is unattainable.

It is furthermore impossible to follow the train of thought according to which the honorary Blockleiter is supposed to be equally responsible as a Reichsleiter or Gauleiter. Difference must be made according to the position held.

H0212-0016

A Gauleiter has different possibilities for gaining an insight and his knowledge and experience is greater than that of a local group leader. The political leader, who is a professional, must be judged differently than one who is acting in a honorary capacity.

Only if proof of a joint conspiracy is furnished could they be put on the same level. But that conspiracy in particular is yet to be established.

When examining the incriminating documents, the difference of this responsibility becomes evident. There are instructions given at the Higher level of which merely the smallest circle had gained knowledge; their are instructions meant only to be communicated generally to political leaders, which, however, did not pass through the entire channel of orders. There are instructions which issued in a certain part of the Reich independantly did not become known in other Gaus. There are measures carried out by the highest political leaders which only became known to them because of special state positions and which therefore did have no contact with the apparatus of the party.

The difference in position has in fact been recognized by the prosecution during their case against the political leaders and accordingly, the members of the local group staffs and the auxiliaries of the Zell andBlockleiters have been omitted from the proceedings. It is in accordance with this principle that over and above this the degree of responsibility on the part of the remaining groups must be examined.

The position by which the Zell and Blockleiters are still included in the proceedings, whereas members of the staffs of the local groups who held a similar or even higher rank are not included, is due to the fact that in the manual of organization they have been described as "Hoheitstraeger".

The significance of the manual of organizations is misunderstood by the prosecution. The book was a theoretical work and has been described as such by the officials of the Reichs organization leader, Ley.

The designation "Hoheitstraeger" was given to Zell and Blockleiters for merely constructive reasons, becuase in that way they could be included in the territorial organization.

H0212-0017

This construction led to it that a Block leader appears as an important Hoehitstraeger, whereas a Reichs leader lacks this same characteristic; on the other hand, the Blockleiter falls, as a Hoheitstraeger into the same category in the Reichs as the Fuehrer , Affidavit Hederich in which connection I draw your attention to P.L.No 27, Deputy Chairman of the Investigating Commission for N.S. Literature : Affidavit P.L.No. 25 Schmidt, head of the Chief Department of the Reichs organization Chief, Affidavit P.L. -No. 26 Foertsch, Gau-Organization chief Munich-Upper Bavaria.

Accordingly, in the book of Chief Section Leader Dr. Lingg, entitled "Administration of the NSDAP" which appeared in 1940, Zell and Block leiters are not listed as Hoheitstraeters. The designation, Hoheitstraeger only goes down as far as the level of local group leader (Ortsgruppenleiter).

In the same manner a decree of the party chancellory, dated the 8th of October, 1937, does not include the Zell and Blockleiters among the Hoheitstraegen(Document R.L. No.2). There, only four Hoheits territories are mentioned and they end with the local group, Ortsgruppenleiter.

This follows an announcement from Hitler dated 25 April, 1941 regarding authority to enter damaged property after an air raid. There once again Zell and Blockleiters are not induced amongst the Hoheitstraeger.

Equally, the periodical "Der Hoheitstraeger", submitted by the prosecution as Document 2660-PS, for the purpose of proving the special character of the Zell and Blockleiter shows that the periodical was only dispatched to ranks up to and including local group leaders. (See Document P.L. No. 25)

THE PRESIDENT: Dr. Servatius, are your pages in the German the same as the English pages or not ?

DR. SERVATIUS: I haven't had time to check them, my Lord. They ought to be the same. I am now on page 54.

THE PRESIDENT: Yes. I want you to go back to page 53 for a moment. I didn't understand your argument at the bottom of page 53. This is what it says in the English :"The designation 'Hoheitstraeger' was given to Zell and Blockleiters for merely constructive reasons ...." I don't know what the

H0212-0018

word "constructive" means there; and it goes on : "... because in that way they could be included in the territorial organization. This construction led to it that a Block leader appears as an important Hoheitstraeger, whereas a Reich leader lacks this same characteristic ... " What do you mean by "Reich Leader "? Is that the same as a "Reichsleiter"?

DR. SERVATIUS: Reichsleiter, my Lord.

THE PRESIDENT: Then on the next page, page 54 you go on to say in the third paragraph : "In the same manner a decree of the party chancellory, dated the 8th of October, 1937, does not include the Zell and Blockleiters among the Hoheitstraeger (Document R.L. NO. 2). There, only four Hoheits territories are mentioned and they end with the local group, Ortsgruppenleiter.' Well, that is equivalent to saying, isn't it, that the Reichsleiters are Hoheitstraegers ?

DR. SERVATIUS: No. On the level of the Reich there is only one Hoheitstraeger and that is Adolf Hitler himself, the Fuehrer, whereas Reichsleiters are not Hoheitstraegers since they, themselves, had not allotted territories. That was the Fuehrer only, therefore, and from the point of view of structure, construction, organization, the point was that there was the Reich and Fuehrer and then comes the Gauleiters, Reichsleiters and Ortsgruppenleiters and there it ends.

I continue with the last paragraph. In addition, a further insturction of the party chancellory was issued on 7 December 1943, in which the Block and Zell leaders are not counted amongst Hoheitstraegers. (Document P.L.No.24) But not only from the point of view of form, also from the point of view of their activity, the Zell and Block leaders were not persons to whom special privileges and authority was granted; their activities have been described by witnesses examined before this Tribunal; it consisted in practical assistance. These political leaders were acting for the administration of the party or during war time to an ever-increasing degree carrying out social work in order to alleviate the distress after air-attacks to which was added practical assistance in resettlement and the prevention of damage during air raid alerts. It was a self-sacrificing and strenuous work which was demanded from these persons.

H0212 - 0019

These political leaders did not occupy a predominant position. Interesting in this connection is Document P.L.No. 9, the Appendix to the announcement from the Deputy of the Fuehrer, dated 12 July 1940. It appears from this that contrary to the actual Hoheitstraeger, the political reliability of Zell and Block leaders had still to be established , if they desired to apply for a marriage loan or any other type of financial assistance.

That such people could not be regarded as generally suitable for the duties of a spy is a certainty/

It also becomes clear that they had no tasks of political leadership; they were mostly ordinary people who lacked the time and the knowledge for such work. The fact that from certain more highly educated circles, individual persons were appointed as Blockleiters also shows that it was not their political ability which was to be used in this connection.

Particularly important in this connection is the Document P.L. No. 24 just mentioned, regarding "Hints for Leadership of the Party Chancellory" These "Hints for Leadership" are issued as is stated in the Document

H0212 - 0020

"For the Speedy Political Information of the Hoheitstraeger, that is, the Gau, Kreis and local group leaders, and for the Support of Leadership Work." In order to inform the junior leaders of the Party and affiliated organizations, the Hoheitstraeger are in each case and in their territory, Gau, Kreis, and local groups, to inform the corresponding organizations and units of these leadership hints.

Block and Zell leaders, therefore, were neither the regular recipiants of such leadership hints, nor were local group leaders allowed to inform them of those. This proves that Zell and Block leaders were excepted from the political instructions which was meant to be achieved by these leadership hints, and that they had no or very small tasks of the nature of leadership, and that it was not considered essential to support them by means of these leadership hints.

The fact also that, particularly during war-time, zell and Block leaders were simply appointed to their positions speaks against the political significance of their positions.

The attempt, repeatedly made during the war to refuse acceptance of such an office, also shows considerable pressure on the party of the party to accept such a position. It has become clear, on the other hand that the refusal did not take place because the tasks which had to be fulfilled were considered criminal; it was the additional effort and the work involved in addition to the considerable professional activities in war-time which were the cause for such refusals.

It is an error on the part of the Prosecution if it is assumedthat a Zell or Block leader had had the power to issue orders, or institute disciplinary actions, or that he had powers similar to those of the police. See Official Party Information Document P.L.-29. It is furthermore not correct that he had the right to call upon the SA, SS, or the Hitler Youth for their support. The evidence taken before the Commission has established this fact. I draw your attention to the examination of Witness Hirt on 14th of April, 1946, the Witness Engelbert, the Witness Schenieder, and the Witness Kuehn. Additional affidavits confirm this fact. This corresponds to the official party instructions, documents PL No. 26 and PL No. 27.

H0212 - 0021

The Zell and Block leader could have no knowledge of the events on the strength of his actual position; events which according to the indictment are criminal furthermore, a general activity in that direction cannot be proved.

The knowledge on the part of an ordinary political leader was no greater than that of any party member. I draw your attention to Document PL 47.

His duty to support the party and the state was no greater than that of any civil servant, see document PL No. 37. That there have been individual actions by political leaders, which are strongly incriminating, is something which everyone knows who has lived in Germany, but it is equally well-known that this would not represent an action typical for the majority of all Block Leaders.

From the point of view of time, too, this group requires special examination.

Until the first of December, 1933, every party member was under an obligation to the Party to comply with a request for the taking over of an office in the Party.

From the introduction of the law for the Safeguarding of the Unity of the Party and State on the first of December, 1933, this duty, until then of the nature of a private contract, the duty to cooperate, became a legal obligation toward the state. In paragraph 5 of this law, the detention and arrest are threatened in the event of the violation of this duty and furthermore penalties which according to German law could not be imposed in the event of violations of legal regulations.

By means of Paragraph 1, Sub-paragraph 3, of the decree for the carrying out of the law on safeguarding of the Unity of the Party and the State, the statute of the NSDAP, was given a public-legal character. In that manner, also Paragraph 4, Sub-paragraph 2-B of the statute, was given public-legal character, which paragraph had previously formed the basis for the obligation based on civil law regarding the taking over of a function in the party.

The fact that the coming into force of the law, dated 1 December, 1933, for the taking over of an office in the Party was a lawful duty, becomes

H0212 - 0022

argumentum e contrario, also from a specific statement contained in Paragraph 20 of the Reichs Labor Law dated 26 June, 1935, according to which members of the Reichs Labor service are entitled to refuse the acceptance of an honorary function in the services of the Party. Special legislation would not have been necessary regarding the exception of Reich Labor Service members from the duty of taking over a function in the Party, if the duty of cooperating in the Party had not been a lawful one. In its practical effects, the duty to cooperate was equal to coercion.

Anyone refusing to obey the instructions for the taking over of the functions would, without doubt, have been ejected from the party by a party tribunal -- the documents PS 63, PL 64, and PL 8. Exclusion from the party would have been equal to the loss of an existence with all its consequences -- that is document PL 65. Apart from this, a party member who refused to accept such a function had to be prepared to be penalized with the loss of his liberty -- that is document PL 63. The coercion therefore to accept a function in the Party was simultaneously physical coercion.

Anyone working in the Party before the seizure of power was probably doing so for idealistic reasons. Anyone who was given a function after the seizure of power, probably accepted it in most cases without enthusiasm, particularly since he, as shown by the evidence, was only taking upon himself burdens and unpleasantness, without having any advantages in the process. Without doubt, however, all those who became Party officials, after the beginning of the war, accepted a Party function only on the basis of the existing legal regulations. Those men not called up into the armed forces were either physically unfit or professionally so over-burdened that they neith had the time nor the inclination to take over a function in the Party. This explains the fact that instructions from the Fuehrer and the Party Chancellery in which the service departments of the party were instructed to call upon Party members for their cooperation became more and more rigorous and even contained the request to proceed against anyone refusing to collaborate in the Party by employing the legal system of the Party -- that is documents 61 and 62. During the war the legal and physical coercion regarding cooperation in the Party not only existed on paper; in fact this possibility was being made

H0212 - 0023

use of to the largest possible degree, which is proved by document No. 8.

The assumption is justified, therefore, that if anyone became a functionary and political leader during the war, this was regularly the outcome of the legal instructions and the result of the threat of being prosecuted by the legal system of the Party. This applies in practice to all the Block and Zell leaders and members of the local group staffs appointed during the war.

The Prosecution has asserted, on the other hand, that this coercion regarding collaboration in the party was merely the result of a voluntary entry into the Party. This would lead to the understanding that membership in the Party would already be punished; on the other hand, one cannot argue it has been done by saying that the Party members concerned could have avoided the coercion for collaboration in the Party, and that they ought to have accepted a position in one of the affiliated organizations, for instance the NSV, in good time. The incorrectness of this conception becomes apparent when one realizes that in this way collaboration in the Party is being recommended though in this case elsewhere.

In the case of civil servants and as a further instance of coercion, one must add the pressure exercised by the superior departments and interests. Compare documents 67, 68, 69 and 70.

These decrees were the means by which civil servants could be forced to collaborate in the Party. If a civil servant refused to comply with this request, then he would have to expect the worst possible consequences; he had to fear that disciplinary action would be started against him by his superior department which would lead to the loss of his livelihood and which could lead to starvation for his entire family.

If, on the other hand, he wanted to escape this danger by first of all leaving the Party, he would likewise suffer the loss of his livelihood (see document No. 71). Civil servants found themselves in a particularly diffic situation therefore.

In view of these circumstances, we cannot consider these officials as a freely constituted group of people.

The tasks of the Zellenleiters and Blockleiters, and, therefore, also the importance of their position varied according to the periods.

H0212 - 0024

Those who were Zellenleiters and Blockleiters before the seizure of power in 1933, must have been politically more active than those who accepted these positions at a time when only practical tasks could be fulfilled. During the war, persons who by reason of their age or their occupation had not been drafted, were employed in these offices as auxiliaries. It is obvious that these persons were not elite troops of the Party, destined to spread fear and dread, and who played at being little Caesars.

If in addition, you consider the difference of situation between town and country, you cannot conclude that these 1,200,000 persons included in this group were criminal.

The Prosecution has excluded the members of the Ortsgruppenstaff from the proceedings. Their point of view is presumably that these members in their capacity as honorary helpers of the Ortsgruppe, hold a position of less importance. It would be well to examine whether the members of the Kreisstabs and Gaustabs can be excluded on the same grounds. Their connection with the influential Hoheitstraeger puts them under a more serious suspicion. The nature of this connection must be examined more closely.

The leading political offices of the staffs were the staff office, the propaganda office, the training office, the organization office, and the personnel office. Their personnel consisted mainly of officially paid persons.

The treasurer was another member of the staff. He was not responsible, however, to the Hoheitstraeger but to the Reichs Secretary of the Treasury.

The party administration of finance had created an independent control and accounting system which was a purely bureaucratic institution and of unpolitical nature. It comprised about 70,000 political leaders.

Besides the political offices, there were still consultant political leaders. There were the four following categories: One representative of the different sections of the NS Women's Association, NS Professorial Association, and the NS Student Association, a representation of the Welfare Associations, NSV and NSKOV, the leaders of the professional organizations for teachers, officials, technicians, physicians, and members of the legal profession. The representatives of the technical offices: DAF, industry and

H0212 - 0025

commerce, agrarian policy, etc. In order to gain a correct impression of the dimensions of these offices, it must be pointed out that they generally had no staff of their own and very often no office rooms. Sometimes they were not even in the same building as the staff but some distance away.

There was little practical cooperation with the Gauleitung and Kreisleitung. A number of affidavits corroborate that these agencies were hardly ever visited by the Hoheitstraeger. This is affidavit PL 39. And they were not requested to work with them --- that is affidavit 48 to 50. During the war, some of these agencies were dissolved because they had become unnecessary, such as the Reichstamt, the Legal Office, in 1942, and the Office for Officials in 1944. The task of these offices was mainly technical, and their officials therefore received instructions not from the Hoheitstraeger, but from the competent superior agencies. Document PL 72.

No direct accusations have been made by the Prosecution against the activity of these staff members.

Physicians have been incriminated in connection with mercy killing and the concentration camp atrocities. But these are not physicians of the Public Health Office. Agreements between the Reichs Minister of Justice and Himmler and Goebbels upon a special criminal law and extermination through labor have been mentioned. The Kreis offices and Gau Offices for justice are in no way connected with this.

These offices certainly represented the National Socialist ideology within the staffs, for this was their task, but here it is important to establish how far the political leaders were concerned, outside the official activity, in a conspiracy with aim to a war of aggression or the committing of war crimes.

One cannot declare them to be criminal on the grounds of a general supposition that they might have had some knowledge of these facts. It is most important to verify the exactitude of this supposition now, and it must not be postponed until a later trial.

The verdict of the Tribunal will count for two-thirds in the condemnation of these men. It is to be feared that during the subsequent trials, the individual guilt may be too easily presupposed upon the assumption

H0212 - 0026

of their general guilt.

In the judging of the typical offices, it must not be forgotten that about 140,000 persons are concerned who were employed in an honorary capacity.

H0212-0027

THE PRESIDENT: What is the basis for that statement that 140,000 persons were employed in an honorary capacity?

DR. SERVATIUS: These are the members in the technical departments, who worked on the various staffs of the Aemter, Gau and Ortsgruppen. In the case of the Ortsgruppen, the prosecution has leftthese people out and excluded them. I am trying to establish that the other people also were honorary employees and were experts, working in that capacity. They had no part in the war crimes or any crimes mentioned. They did not come under the Gauleiter, but had instructions from their direct technical superiors.

THE PRESIDENT: Dr. Servatius, you have not answered my question. What is the basis for the statement and I want to ask a second question, what do you mean by honorary capacity?

DR. SERVATIUS: By honorary capacity, I mean people who were not paid for their work. They were honorary appointees and an honorary appointment means no payment.

THE PRESIDENT: You said they were technical experts?

DR. SERVATIUS: Yes, they came from their units, the legal expert, the medical expert and the teaching expert all were represented, there were also welfare men and men from the labor front. Each one of these was an expert in his own work, who was consulted in an honorary capacity.

THE PRESIDENT: Again I ask you Dr. Servatius, what is the evidence that there were 140,000?

DR. SERVATIUS: That figure is carefully figured on the basis of the organization's book. I can supply more complete details later, but I am not at the moment in a position to do so, but I will later and I can produce a more accurate figure. I have stated with respect to each subject how many people were employed in each phase in order to give a clear picture.

THE PRESIDENT: Go on.

DR. SERVATIUS: We still have to examine the group of the real Hoheitstraeger, the functionaries, who make up the nucleus of the Party. Their special position and their political author-

H0212-0028

ity distinguished them, and set them apart from the other political leaders, but their position was varied.

Whereas the Ortsgruppenleiter is restricted in his sovereignty rights to the circle of the Party, membership in his Ortsgruppe, the authority of the Higher Party Leaders, (Hoeheren Parteifuehrer) goes beyond Party limits concerning themselves with the rights of those who do not belong to the Party.

Only the Kreis and Gauleiter have the right for exercising political judgment toward outsiders and in that way determines the fate of those outsiders. At the same time and in this way, they are exerting great influence on the life of all.

The decision which they make is one of their own judgment. This fact is the sign of carrying full responsibility themselves. The Ortsgruppenleiter will only be asked to furnish proof for the judgment. He is only an executive organ and devoid of any independence.

Externally the difference is shown by the fact that the Ortsgruppenleiter acts only on an honorary basis without pay. Through his work, he is prevented from concerning himself in a comprehensive answer with all that is happening as his profession prevents him. It was especially the case during the war when need directed all thoughts and powers towards your own problems.

The 37,000 Ortsgruppenleiters were members of the lower middle class, who had not previously been politically active and who lacked experience in this dangerous matter.

Most of the Ortsgruppens were in the country, where country work proceeded alongside the activity, which had been brought in. The testimony given by witness Hegenbarth before this Tribunal gave a true picture of the situation.

The position of the Ortsgruppenleiter becomes particularly clear when we compare his responsibility with that of the higher Party leader, who was appointed by Hitler directly.

Because of his connection with the highest leadership, the probability of a greater knowledge is greater with the higher Party leader.

H0212-0029

This trial has shown that the separation of the "ressorts" and the artificial tearing apart of administration and police has played an important role. But, because of the merging of many functions, and because many strings were gathered in one hand, at least the highest Party leaders could see when everything was not as it should be on critical points.

The question is: Whether a Gau or Kreisleiter could set his mind at rest, because everything was as it should be in his sector and that the suspicious incident was taking place outside his domain, or his ressorts?

We have to answer this question in the negative. He had to supply himself with the knowledge, taking his own sovereign rights into account, for he was the only who had deprived another of any possibility whatsoever of concerning himself with these things. He had the right, and therewith also the obligation to be active because of his office.

He had become the sole public figure, and therefore, had concerned himself with public matters.

Actually, those Gau and Kreisleiters, who were examined here did concern themselves with events as they occurred. They investigated the transporting of the Jews. They endeavored to get into concentration camps and investigate the conditions of foreign workers. They voiced their misgivings and they protested.

Were they doing their duty that way? In this connection, we had to examine the question of the sharing of responsibility. It is not possible that all concerned themselves with everything. At the lowest levels, there are practical concerns of a local nature, and they could not be concerned with the problems found at the top level. Not every shock can be transmitted to the entire machine.

The Kreisleiter, who passes on reports upon separate incidents to the Gauleiter, particularly in a dictatorial state, must be credited with this separation, but he must concern himself with the result of his reports, and draw his own conclusions.

H0212-0030

This is more so the case with the Gauleiter, in view of his superior position. There exists a limit where the daily routine is no longer concerned and moral principles are being touched upon. When one was in Himmler's sphere of influence, did one really have to drive on, regardless of that which would happen? An answer to this question has been attempted several times. Must one really demand an action immediately and without compromise. Is it really "All or nothing?" Can one afford to let things take their course, or is it "Now or never?" Must one define guilt and merit and can one hope for reformation? Is it sufficient to remain at one's post when one disapproved, or hopes to prevent worse by remaining, or does one become guilty too by remaining and keeping up appearances? Has he who always anxiously makes an effort share any justification? Must he take up the struggle against adversed circumstances, even if his own life seems needlessly jeopardised, or should he submit to it and bow to fate?

"To be or not to be," that is the question.

An answer cannot be found without minute examination of the legal basis of the guilt, the knowledge and sanction and criminal negligence.

If the criminal nature of this group is to be established, these questions must first be decided upon.

Such an examination can be carried out for individual cases only. It is practically possible in the case of a group of two thousand Kreisleiters and Gauleiters. These persons are known, their actions took place in public and are not difficult to clear up.

There remains the group of the Reichsleiter. The same views are applicable to them as to the Gauleiters.

Himmler, who only had the rank of Reichsleiter, cannot be counted with this group. (Document PS 59A.) That position, however, is of great legal importance to all political leaders. They include the principle defendants. According to Article IX of the Statute, the conviction of the group can only

H0212 - 0031

be announced in connection with the actionsof the principle defendants.

The trial brief only mentions Rosenberg and Bormann. Only annex B of the supplement to the trial brief added four more Reichsleiters, thus including the Gauleiters Sauckel and Streicher.

Frick, too, held only the rank of Reichsleiter, which is in contradiction with the direct inclusion of his actions.

Where the other principle defendants are concerned, one must examine whether they committed the acts with which they have been incriminated in their capacity as political leaders, or in another capacity.

The prosecution has recognized the legal significance of this distinction by referring in the summary of the trial brief only to those deeds of Rosenberg and Bormann, with which they are charged in their capacity as political leaders. That is page 75 of the Trial Brief.

One must not depart from this distinction. The ruling of Article IX of the Statute is not merely a purely formal rule of procedure for the trial. It is a pertinent limitation of the criminal groups.

The group is not to be formed arbitrarily and lawlessly by the prosecution, but there must be some connection between it and the act of one of the principle defendants. This is only possible if one of the principle defendants acted within the corps of political leaders. The connection does not exist where the effect of the action of one of the principle defendants does not effect all levels of the political leaders; this is to be considered in passing judgment on the lower grades.

H0212-0032

The connection is lacking in the case of the principle defendants, whose connection with the political leaders was established only later, with the exception of Hess.

In the case of Rosenberg, the actions with which he is charged were essentially in the state sector, where he was active as Reichs Minister for the occupied territories.

The actions of Bormann, as chief of the party chancellory from 1941, are decisive for the judgment of political leaders. As a result of the absence of this principle defendant, however, it is precarious to base the condemnation of the group on either, since there was no close investigation of the occurrances. For the most important charges, it would have to be cleared up whether Bormann acted as chief of the party chancellory, or as secretary of the Fuehrer outside of the party machine, or whether he acted independantly contrary to all instructions. That is Document 53.

It is noteworthy that Hess, Bormann's superior, is not included in the original trial brief, although until 1941 he was deputy of the Fuehrer and the party.

Presumably, the prosecution was at that time of the opinion that he could not be charged with any action in connection with the Corp of Political Leaders, which would indicate a criminal character. This is a significant point of view for the judgment of the group, as far as time is concerned.

The actions of Gauleiters Sauckel and Streicher cannot be taken as standard for the Political Leaders as a whole. As Gauleiters they can only act in their district. The actions with which they are charged in this trial they undertook outside of their function as Political Leaders -- as plenipotentiary general for labor commitment or as a newspaper publisher.

I want to present two legal viewpoints which can be of significance for the judgment. One idea is the retroactiveness of the verdict. I do not want to attack it as legally inadmissible since the Charter has ordered it, but since the verdict is at the discretion of the Tribunal, fairness can be observed here.

Retroactiveness in an individual trial can be justified by the fact

H0212-0033

that perpetrator was warned and had to realize. It is different with the great number of little Political Leaders, who are made responsible for a conspiracy only indirectly through their leaders.

The second point of view is the lack of legal hearing. In these proceedings before the Tribunal, the preliminary decision is reached, which is decisive for every member of the organization. Therefore, everyone was given the right to request a legal hearing. Only comparatively few have made use of this right.

One must assume that many have no knowledge of their right, or have no opportunity to submit their applications to the Court. There are applications from only about one-third of the camps of the English and American Zones; from the French Zone from only two camps; but particular reference should be made to some areas from which no applications at all have been received.

There are no applications from Austria, and the camps there could not be visited. The permission of the Military Authorities was given, but the approval of the Control Counsel was not received. This is noteworthy since there are special circumstances in this case which might possibly exonerate the members; special treatment and judgment, especially in regard to time is advisable.

Nor are there any applications from the Soviet Zone, although the official announcement is said to have been made. I myself only recently had an opportunity to visit two camps. Those interned there declared that they knew nothing of their right to a hearing; not all wanted to submit applications.

For these districts, therefore, the defense was in a rather critical state as regards evidence. For these zones a few Political Leaders were heard who could be reached in British or American camps. Although one obtains a certain picture in this way, the taking of evidence before the Commission has shown that there may be testimony of significance for the defense.

Thus a Kreisleiter of the West was able to testify that the construction of the West Wall had convinced people there of Hitler's defensive intentions. A Kreisleiter of the North referred to the Fleet Treaty with Britain, which the coastal population considered a sign of the will for peace. Other witnesses

H0212 - 0034

have brought forward noteworthy reasons from the church membership of the Political Leaders in their district.

The real significance of the limitation could be judged only after a hearing, so that a judgment on this subject is not yet admissible.

The question is also however of considerable significance for the trial. The charter has guaranteed the opportunity of a hearing. Every provision of form has its deeper sense and it is basicly significant. Here legal hearing is held up as a democratic principle in contrast to rejected police methods. This principle was put forth jointly by the signatory powers and the Tribunal must see to it that it is observed. This is an unrenounceable rejection, which I hereby expressly assert.

THE PRESIDENT: Mr. Biddle would like to know exactly what you mean by the last two sentences.

DR. SERVATIUS: I did not hear what you have said.

THE PRESIDENT: Mr. Biddle would like to know, Dr. Servatius, what you mean by your last two sentences, "Here legal hearing is held up as a democratic principle in contrast to rejected police methods. This principle was put forth jointly by the signatory powers and the Tribunal must see to it that it is observed. This is an unrenounceable rejection, which I hereby expressly assert." Does that mean anything?

DR. SERVATIUS: Mr. President, I wanted to see that I cannot forfeit the right to raise the objection that the hearings in entire territories have not been made possible. The entire Soviet zone is an objection and an argument, which I cannot forego and which should be taken into further consideration later.

THE PRESIDENT: Go on.

DR. SERVATIUS: The divergent practise in the interpretation of Article 9 of the Statute must be noted from another point of view also.

There is a danger of divergent interpretation of rulings of the Tribunal against the organizations.

In addition to a general definition of the organization as a whole, it is essential also that the degree of guilt or innocence of any one group, or

H0212 - 0035

individual therein be adjudicated separately, in the interests of any subsequent proceedings.

The degree of punishment is uncertain.

The scope of the penalties fixed in Law No. 10 of the Control Council, which ranges up to the death penalty, offers no legal protection if their interpretation is left to the free decision of the various national tribunals, which may subsequently sit in judgment. The judgment of the Tribunal might engender new mischief.

The Tribunal must see to it that the goal, which it seeks to attain, will be attained. The punishment must not become a revenge. The measure of punishment must not be based on the theory that millions of victims necessarily implies the guilt of millions, which would be brought to punishment.

If the basic aim of the judgment is to deter, the following must be borne in mind:

. None who appeared before this Tribunal has attempted to justify the crimes which are the fundament of this trial.

All who appeared here divorced themselves from these crimes.

No one has declared that the extermination of the Jews had been necessary, or that a war of aggression was a goal worth striving for, or that the persecution of the Church and the concentration camp atrocities were official.

H0212 - 0036

Only if this had been the case would this be a trial involving an ideology which should be eliminated.

That is why there is no typical pioneer for this ideology, who would have said "I have millions behind me, or I cannot do otherwise, God help me!" The millions were set in motion by another goal for which they fought. This goal was not the world of crime, but the shining radiance of socialism. The masses saw the miracle of the rise to power succeed a period of misery and were strengthened in their belief. They are ready to believe once more.

The foundation to this belief is the justice of the verdict against the organizations by which the entire population will be affected.

This verdict shall inaugurate the era of a new international law and punish those who are responsible for the war. It is only just that the old jurisdiction should disappear from the stage of world history, which punished the entire people by imposing territorial annexations and economic contributions in the peace treaties without regard to guilt.

Today it is threatened by the two-fold and three-fold punishment, by the peace treaty, by law No. 10 of the Control Council, and by the law for de-Nazification.

We are still in a state of war and this trial has been called the continuation of the war effort.

But there must be peace and "Should war not end with war, whence the shall come the peace?"

THE PRESIDENT: Dr. Servatius, the Tribunal observes with appreciation that you have kept within the limit of time which the Tribunal hoped would be kept to by all Counsel on behalf of the organizations. You have made your speech within half a day, but some of the other speeches which have been deposited for translation appear to be very much longer than yours, and the Tribunal wishes me to point out to those Counsel that they will have to make their speeches also within half a day.

The Tribunal will now adjourn.

(A recess was taken.)

H0212 - 0037

THE PRESIDENT: We call on Dr. Merkel.

DR. MERKEL (Defense Counsel for the Gestapo): Mr. President, Your Honors, in the case of the proceedings against the individual defendants, the perpetrations of individuals were examined. During the proceedings against the Organizations, the question we are concerned with is whether into the leg life of this world a new basic principle is to be introduced. The trial of the Gestapo is given its significance by the conception of the Prosecution that the Gestapo had been the most important instrument of power of the Hitle regime.

If I am to defend the Gestapo, it is with the knowledge that a terrib reputation is associated with that name; alas, even that horror and fear are radiated by it, and that the waves of hatred close over this name.

The words, I am about to speak will be spoken without regard for the opinions of the day because I hope to be able to present factual and legal evidence which will place this High Tribunal in a position :

1. To examine, whether by sentencing the organizations, a legal develo ment will be introduced which will serve humanity.

2. To establish the truth regarding the Gestapo and by this :

3. To liberate innocent amongst the former members of the Gestapo from an unfortunate fate.

The first two tasks necessitate the answering of the question which represents a preliminary problem connected with the problem of the Gestapo as a whole.

No allegation made by the Prosecution has shaken me more than the ass tion of the British Chief Prosecutor that the Germans, after six years of Naz domination and through replacing the Christian ethical teachings, by a Godlike admiration for the Fuehrer, and by the cult of the blood, had become a dege- nerate nation. If this judgment is just, then the facts of its existence, apart from the circumstances just mentioned, is due to yet another extraor- dinary factor -- a factor of a character so unusual that history hardly known it: The symptoms of the demon, the demon in Hitler, and the infiltration of the demon's spirit into his regime and into the institutions which he created and employed.

H0212-0038

How far Hitler was a demon has been illustrated by Goethe's words already quoted from "Dichtung und Wahrheit" by my colleague Dr. Dix :

" .....he (The demon-man) radiates an enormous force ... all ethical forces, united, cannot defeat it ... it attracts the masses... and it is from such remarks that the queer, yet dynamic slogan may have arisen : Nemo contra deum, nisi deus ipse."

The effect of the demonic in the greater world has become clear to you in some of the cases of the individual defendants. The case of the Gestapo will demonstrate to you how an institution of the State was repeatedly misused by the demonic leaders of that State. And here during the discussion of this preliminary question, yet another interest must arise, the interest of the legal significance of the demonic for this trial. In order to satisfy that interest I shall give another short quotation from Goethe:

"Demonism furnishes one of the moral orders of the world where power interferes although it does not oppose." According to these words, the cruic point is that two powers, parts of the history of this world, are decisive. "The conflict of which", as Mr. Justice Jackson said in agreement with the poet Goethe, "Forms much of the history of humanity: the world order and the demonism". The juridical of this judgment for our constellation will become clear from the following considerations :

The moral world order was represented by the traditional orders. Opposed to this, Hitler represented the power which was directly opposed to them, and nevertheless incapacitated them. In this trial the aim must be to exterminate the remains of this demonic power. Can this and should this be done in accordance with the agreed principal of the victorious model world order, or can it be done by other methods ?

Here we have the first juridical alternative of this trial clearly before us and this from two of the greatest of the possible perspectives, i.e., in considering the differences between the moral world order and the demonic.

Controversial points of view dominate the present attitude with which to view these matters. The Charter on one hand relies upon the agreed own principals of the moral world order. It wishes to see judgment passed again

H0212-0039

the representatives of the demonic, the individual defendants, and the organizations, by means of an orderly trial, a proper indictment, with appointe defense counsel and resulting in appropriate findings. On the other hand, t "law of the Charter" itself, according to the words of Mr. Jackson, is "a ne law" with principals which contradict the age-old traidtional legal concepti As examples, I quote the assumption of collective guilt and the introducti of laws with retroactive effects.

In this way it becomes apparent that the leading throughts directing this trial are in opposition to each other. It is a common task for all of us to recognize this fact and also through joint efforts on the part of the prosecution, the defense, and the Tribunal to arrive at a "concordantia discordantium."

My leading argument as defense counsel for the Gestapo will have to be devoted, therefore, to the question of how the rules of the Charter are to be understood, according to which the Tribunal can declare during the trial against Goering, Kaltenbrunner or Frick thatthe Gestapo was a criminal organ zation.

Once again I must come back to the principal consideration. If two powers of historic importance in this world decide the moral world order and the demonic, then if this world is to be cleansed, the moral world order m be victorious. But is the moral world order empowered to conduct the figh against its opponent with exceptional rules which differ, themselves, from the basic principles of moral world order ? For the sake of the purit y of its character and its victory, moral world order must only fight with weapor of its won categoric imperative, and that without any compromise. Because i is thus that the opponents of Hitler fought during the six years of war, relying on the principles of the Atlantic Charter. But is it right that they the declared representatives of the moral order, should now, with the battle of arms at an end, conduct the final struggle against demonism with such exceptional rules ? That would be an impossibility. Would it not create the impression that the victorious powers, particularly in the realm of ethi did not have sufficient confidence in the center of their own being ?

H0212 - 0040

As a result, for coming generations this maxim would develop "That which is useful to the victor is right." The relentless "Vee victis" would have been raised to a dais, whereas the victors had especially emphasized that they entered the lists for justice, and because of justice. With the word "Justice" the signatory powers have called the Tribunal into existence by stating in paragraph one of the Charter "An International Military Tribunal shallbe set up in order to pass a just judgment."

They gave the word "Justice" emphasis by having Part IV of the Charter headed "Regulations for a Just Proceeding", and then they used precautions in that regulations contained in paragraphs 9 and 10 are regulations that may be applied.

The victors had the wish to have organizations with a reputation such as the Gestpo who would not understand that, declared criminal, but they took care to make paragraphs nine and ten a regulation which had to be applied. In that way justice became the first premise of the Tribunal. Within its limits, therefore, the regulations that may be applied under paragraphs nine and ten are to be handled as if the entire stipulation had the following wording; "If the Court consider it just, it may declare the organizations criminal." In this way the entire decision rests on the concept of justice.

Justice in its truest formis an attribute of God -- "God is Just." This sentence has penetrated our consciousness in the sense that God will callto account only him who is really guilty according to the word of Jesaya "I have called you by name."

In that way since this principle has been assured, there is much contemplation according to which organizations and their members must be dealt with. In the main, two things are involved, the members of the organizations and their families, who make up at least fifteen million people. Now we have to see that this remarkable but terrible proverbproves itself true because of the judgment: "No one can do anything against the moral world order without the moral world order itself."

From this, the following conclusion arises for my final plea: That the question put by the Charter to the prosecution, to the defense, and to the Court, whether rules of exception are admissible, whether above all the organizations are to be considered collectively capable of guilt, whether laws

H0212 - 0041

with retroactive power may be applied -- a question that must be answered in the negative.

The counter-question, whether the world in the future can be protected on the basis of the individual system from demon catastrophes, and whether the Hitler catastrophe did not prove the opposite, I should like to answer to this effect: The protection of the world against such catastrophes is not a question of a system, but rather a question for determined men who rest secure in the moral world order.

The significance and the consequences of the demand voiced by the prosecution to have the organizations declared criminal are of tremendous scope. Reason enough, that defense counsel must examine with the utmost thoroughness, and in every direction possible, whether the bases are present which can carry an indictment of such consequence in the sense of justice under the moral world order.

First of all I should like to establish all emphasis as the first and most important result of my examination. A group (Gemeinschaft) can not be declared guilty. For criminal guilt means the realization of conditions which are punishable not only according to objective but also according to subjective aspects. In other words, a crime can be punishable only, and must have been committed deliberately; according to natural concepts. We can speak of intent only with the single individual but not in the case of a group, and if in this connection foreign laws are referred to, this, in the final analysis, is a confusion with the coinciding will of numerous individual persons directed toward a fixed aim.

However, the problem of collective guilt lies in a sense much deeper. The thought to reject collective guilt goes back into the most ancient time. It originated in the Old Testament and through the Greeks and Christianity, it spread over the entire world. In this way it has become the penal guiding principle of the entire moral world order. In Roman days this sentence was expressed clearly "Societas delinquere non-potest." In modern times we have retained the thought of individual guilt.

On the 20th of February 1946, the Pope said in his radio speech that it was a mistake to assert that one could treat a person as guilty and responsible merely because he had belonged to a certain organization, without taking the

H0212 - 0042

trouble to investigate in the individual case whether the person in question had made himself personally guilty through his actions or his failure to act. That was an infringement on the Rights of God.

In the same sense the Hague Rules on Land Warfare of 1907 in Article 50 expressly prohibit the infliction of fines because of the actions of individuals for which the population cannot be considered co-responsible.

Finally, the former State Secretary, K.H. Frank, was condemned to death and executed, because he had among other things, had the village of Lidice wiped out because of the conduct of individual inhabitants of the village. That is to say, the fact that he had assumed collective guilt of the village community and inflicted a collective punishment on the village, was counte as a crime. Thus, in our case, it cannot be proper to punish an organizatic as a whole collectively, because of the crimes of individuals.

With these brief references I believe I have proved that the basis of the accusation against the Organizations is not firmly established. I agree with the legal statements of Mr. Jackson only insofar as he concludes his legal observations with the statement that: "It is completely unbearable from such thinking according to the letter of the law to reject personal impunity." The personal impunity of the individual members of an organizat in connection with the punishable actions committed within the organization cannot be derived from the rejection of collective guilt; rather, the culpability of the individual for the punishable actions committed by him can be emphasized.

The legal basis of the whole trial against the individuals and organizations here accused is the Charter created by the United Nations. The defense has already taken an opportunity to express doubts about the Charter. I refer to that.

I want to bring out one point of view once more. If, in case an organization is declared criminal, the former members are to be punished because of their mere membership, then they must pay for something which was legally permitted at the time of the action. Thus the Charter establis norms with retroactive force. The legal principle, however, which prohibit laws with retroactive force, is firmly established in the law of all civil states.

H0212 - 0043

Thus the French Constitutional Assembly on 14 March, 1946, decided to give the Constitution of the French Republic, as a preamble, a new formulation of the "Declaration of Human Rights." This Declaration reads in Article 10:

"No one can condemned or punished unless on the strength of a law passed and published before the deed."

According to this general international legal concept, the American Military Government in Germany ordered through Law No. 1 in Article 4:

"A charge can only be pressed, sentence passed, and punishment executed if the act at the time of its commission was expressly legally declared punishable."

The same law prohibits the use of analogy or ostensibly healthy popular feeling. Yes, the American Military Government considers the principle mentioned so important that it punishes its violation with the death penalty.

Finally, I may be permitted in this connection to ment on Article 43 of the Hague Agreement of the year 1899, according to which the United States of America as well as England and France, undertook the obligation toward the other States, including Germany, in occupying a foreign country, to observe the laws of this country unless there was any compelling obstacle.

The United Nations have proclaimed that the goal of this trial is to restore justice and respect for International Law, and thus to serve World Peace. They have acknowledged fundamental human rights and recognized principles of International Law. Stamping as a criminal for formerly legal political convictions, however, could be considered a limitation of this acknowledgment and could shake confidence in fundamental human rights. As a precedent, such a judgment could have disastrous consequences for the idea of Justice and Personal Freedom.

My previous statements concerned the admissibility of the charge against all organizations. For the Gestapo there are two further factors.

The Gestapo was a State Institution, a number of State Agencies. An agency, in contrast to a society or other private organization, pursues not self-chosen but State-ordered aims, not with its own but with State means. It fulfils its function in the framework of the total State activity. Its actions and measures are State administrative acts. In the case of a State agency one cannot speak of submission to a common willof the agency nor of a

H0212 - 0044

union, more or less, by agreement for a common purpose. Thus there is lacking here the prerequisite of the concept of an organization or group and of membership in the sense of the Charter. If private organizations cannot be considered responsible and subject to punishment, then State Agencies and Administrative Offices certainly cannot. Only the State itself could be held responsible for its institutions if that were at all possible never the Institution itself.

The Institution of the Police -- the Political Police too -- is part of the internal affairs of a State. A recognized international legal maxim, however, prohibits the interferenceof a State in the internal negal affairs of a foreign country. And so there are objections to the charge against the Gestapo in this connection as well, which I consider it my duty as defense counsel to point out.

Finally, there is a further question to be examined: If the Gestapo is to be declared criminal one of the principal defendants must have been an official of the Gestapo. But was any one of the principal defendants evern an official and thus a member of the Gestapo? That this prerequisite for trial exists, seems very doubtful for Goering as Prussian Prime Minister was Chairman of the Prussian Secret State Police

H0212-0045

and could give orders to it but he did not belong to it. His position as "Chief of the Secret State Police" was, moreover, eliminated with the appointment of the Chief of the German Police and with the Nationalization (Verreichlichung) of the Prussian Secret State Police in the years 1936 and 19 Frick, as Reich Minister of the Interior, was the competent minister for the Police but he was never an official of any particular branch of the Police.

Kaltenbrunner, finally, has testified that with his appointment as Chief of the Security Police and the SD he was not made Chief of the Gestapo, and in fact he was not -- as Heydrich had been since 1934 -- the head of the Secret State Police Office. Nor was the Chief of the Security Police and the SD under the budget of the Secret State Police but was carried on the budget of the Reich Ministry of the Interior.

C. Substantive legal prerequisites (prerequisites for the establishment ofculpability) of the Indictment.

In case Indictment and condemnation of the Gestapo should nevertheless be judged admissible, I now turn to the question of whether the substantive legal prerequisites are given for declaring it criminal. In other words it must be examined whether the Gestapo as a whole was a criminal organization or group in the sense of the Charter. In the examination of this question I shall follow the conditions laid down in the decision of the Court of 13 March 1946 and designated as relevant.

But before I go into this question I must point out a general error regarding the type and extent of the activity of the Gestapo. Among the German people and perhaps even more abroad, it was customary to ascribe to the Gestapo all police measures, terror acts, deprivations of freedom, and killings, as long as they had any police tinge at all. It became the scapegoat for all misdeeds in Germany and in the Occupied Territories, and today it is to bear the responsibility for all evil. Yet nothing is more mistaken than that. The error arises from the fact that the whole Police whether Criminal Police, Wehrmacht Police, Political Police, or SD were, without distinction of the branches, considered Gestapo. When Heydrich said at the German Police Rally in 1941: "Secret State Police, Criminal Police and Security Service were enveloped in the mysterious auraof the political detective story", this characterized the almost legendary atmosphere by which

H0212-0046

the Gestapo in particular is surrounded to the present day. It was apparently according to Heydrich's tactics to let the Gestapo appear in the opinion of people at home and abroad as an instrument of terror, to spread fear and horror of it, in order to create fear of the commission of intrigues hostile to the State.

That the Gestapo was unjustly accused of many crimes may be shown by a few examples. One of the most disgraceful individual crimes during the war was the murder of the French General DeBoisse at the end of 1944 or the beginning of 1945. The French Prosecution charges it against the Gestapo on the basis of documents 4048 to 4052-PS. According to 4050-PS, however, Panzinger, who was entrusted with the execution of the plan, was at the time Head of Office V of the RSHA, that is Head of the Reich Criminal Police Office. Schulze, who is mentioned in 4052-PS, also belonged to the Reich Criminal Police Office. 4048-PS, according to the file note V. cB, was also drawn up by the Reich Criminal Police Office as Office V of the RSHA. Office IV of the RSHA -- Gestapo Office -- was thus not involved, but only the Reich Criminal Police Office which included the section charged with searching for prisoners of war. Himmler, who as Chief of the Replacement Army, was also in charge ofthe Prisoner of War System, contacted Panzinger directly in this matter; Office IV did not have knowledge of this occurrence at any stage. Whether Kaltenbrunner knew anything, he must make clear.

These facts are proved by the Gestapo Affidavit No.88.

In the report on the condemnation of participants in German War Crimes in the Russian city of Krasnodar (USSR 55), which was submitted by the Russian Prosecution, the commission of these terrible crimes is charged against the Gestapo without further proof. In reality, this was the activity of an Einsatzkommando, not the Gestapo. (See Gestapo Affidavit No.5).

I may refer to the testimony of the witnesses Dr. Knochen and Franz Straub. It proves that in Belgium and France, as everywhere, the Gestapo was frequently unjustly accused of crimes.

Through several witnesses (Dr. Knochen, Straub, Kaltenbrunner), it has been established besides, that frequently in the Occupied Territories and in the Home Area swindlers and other shady characters appeared, who falsely passed themselves off as Gestapo officials. Himmler himself demanded that

H0212 - 0047

such false Gestapo officials should be handed over to the concentration camps. (See Gestapo Exhibit No.34 - USA 207;) Gestapo Affidavit No.68.

As indicated, the Supreme Commander of Sipo, Heydrich, was not entirely without responsibility for the false opinion about the Gestapo. Thus he consciously furthered the rumor that the Gestapo knew everything politically suspicious because it spied on the population. This could not be true as is proved by the fact that the approximately 15,000 to 16,000 Gestapo officials in question, even if they had watched and spied on the people, would have been by far inadequate for this purpose (Dr. Best).

The crimes which Gestapo members actually committed are not to be excused. But it is equally certain that many things occurred for which the Gestapo officials are not responsible, and that it was customarily not examined and differentiated whether certain deeds or misdeeds were carried out by members of the Gestapo or the Kripo, the SS or the SD, or even by native criminals. If, in the interest of combating crimes, it is judged proper in a penal condemnation to give a choice as regards the deed in the sense that punishment is to be inflicted whether the established deed falls under this or that penal law, such a choice can never be given as regards the person of the perpetrator. In other words: it would not be just to ascribe a deed to the Gestapo if the guilt of its members is not absolutely established.

As already said, the Gestapo is no union of persons in the technical sense and probably also in the sense of the charter. Its constitution, its aims and tasks and the methods employed by it cannot fundamentally be designated as criminal. The position of the political police, its special tasks and the measures to be taken by it, of course demanded the form of organization especially adapted to these purposes. In this connection I consider a separate but still comprehensive presentation of the organizational and personnel structure of the Gestapo all the more important since the court in its decisions of 14 January and 13 March 1946, showed that it might ascribe decisive importance to the clarification of this question.

Your Lordship, in order not to tire the Court with the presentation of the organizational structure and the personnel structure, I shall not read t

H0212 - 0048

next nine pages, but shall ask the Court to take judicial notice of them.

I draw the special attention of the Court to pages 20 to 24. They deal with the fundamental difference between administrative and execution officials the technical personnel, the employees, the emergency service workers, and the groups of persons who were taken over as units into the Gestapo -- the Secret Field Police, the Customs Border Protection, the Military Counter-Intelligence, and affiliated units.

I now continue on Page 24 at the top.

The above mentioned State-organism of the political police with its character as a branch of the State administration was outside the structure of the NSDAP and its organizations. The Gestapo was not dominated by the Party; to the contrary, its assumption of independence within the State and outside the structure of the Party was to serve the purpose to proceed in cases of perpetrations committed by Party members with measures of the State in particular. If Himmler as Vice-Fuehrer SS became the chief of the Political P in all counties and later in the Reich in 1933, then the organizations of the County Police were without influence in that connection. Nothing important changed, in fact, with regard to their activities. The Political Police in the German counties, when they were reconstructed in 1933, were mostly staffed with officials from the previous police authorities; not even directing offici were Party members in every case. Even later these officials who had been taken over were not replaced by Party members. Only to a small extent, and on as employees and workmen for technical duties, such as drivers, teleprint operators and auxiliaries, were persons from the Party, the SS and the SA taker over.

This distance from the Party and its affiliated organizations appears to contradict the so-called assimilation of the Gestapo into the SS. This assimilation merely meant an affiliation by name to the SS. The reason for th assimilation was the following:

The system of professional civil servants had been introduced into the Gestapo, and maintained. On the other hand, civil servants were partly not particularly respected by the Party because of their political or non-political past. In order to strengthen their authority during the carrying ou of their duties, in particular when acting against national socialists, they

H0212 - 0049

were to appear in uniform, as witness Dr. Best has testified -- who has described himself as the "motor" of this assimilation. With this assimilati the Gestapo officials -- as, incidentally, also criminal police officials who were also to be assimilated -- were formally listed among the SD formations of the SS, though they remained solely under the jurisdiction of their own superiors without doing any SSor SD duties. Furthermore, the assimilation was only carried out slowly and to an inconsiderable degree. At the outbreak of war in 1939 only approximately 3,000 of the members of t Gestapo, out of a total of 20,000, had been assimilated. It is significant that Himmler, by no means liked to see the Gestapo appear publicly wearing SS uniforms, as becomes evident from Document USA-447.

During the war even non-assimilated persons had to wear the SS uniform on certain duties without being members of the SS. Apart from that the SS did not control the police or exert any type of influence upon its activitie it was only in Himmler's person that there was personal union in the leader ship of the two.

With reference to this statement I refer you to the testimony of Dr. Be

The Gestapo as a whole had nothing to do with the SD, which, as is known, was purely an organization of the Party. Personal union only existed in the position of the chief of the SIPO and the SD (Heydrich, later Kaltenbrunner), which was accidental, however, and did not form

H0212 - 0050

an organizational or functional interconnection. In no case was the SD centralized with the Gestapo in order to form a system of police. The SD did not have to support the Gestapo in its tasks, it had no police tasks whatever.

The officials of the Gestapo did not, by any means, consider themselves members of a uniform organization with the SS and the SD. Every member of one of the three organizations knew that he belonged to an independent institution serving independent purposes.

Although the Gestapo was, therefore, in no way organizally or, from th point of view of duties, connected with the Party, it was, nevertheless, not altogether detached from the administrative tasks of the State being, as it was, a State authority. To the contrary, on every level interconnecti existed with the general and interior administration. The higher administrative organizations, The Ministers of the Interior in the counties, the Supreme Presidents and Government Presidents were entitled to receive reports and issue instructions. Evidence has, in fact, shown that the majority of all State Police actions were carried out by the district and local police organizations and the Gendarmerie. This fact particularly furnishes an indication how serious, and doubtful it is to indict the Gestapo as an institution of the State. Because, thinking consequently, the officials of the aforementioned administrative organizations as well as those working in a State Police capacity would have to be indicted together with the Gestapo, and that thought alone appears absurd.

If it is impossible for those reasons to speak of a coordination of personnel in the case of the Gestapo, then it is equally impossible to speak of a membership in the sense of the indictment, and the demands of voluntary service were even less fulfilled. Not one of the witnesses examined was able to justify this, the Prosecution's allegation, to the contrary, all witnesses had to testify that as a matter of principle membership of the Gestapo was generally not on a voluntary basis.

The assignment of officials to the Gestapo took place, to a large exten in that manner, that from a previous organization they were transferred to an organization of the Gestapo. The order for transfer had to be obeyed on the strength of the existing civil servants law. Severe disciplinary disadvantages would have been the result of a refusal and very probably the

H0212 - 0051

the loss of the position held; and had such a refusal been based o n the statement that for reasons of conscience the officials did not agree with activities of the Gestapo then he would, as would have any civil servant in a similar case, become subject to disciplinary proceedings or even penal proceedings resulting in the loss of his position and hard earned privileges and, apart from that, he would even have gone to a concentration camp.

Replacements of civil servants for the Gestapo were organized in such a way that, in accordance with police civil service law, 90% were drawn from the former protection police officials who wished to become criminal police officials, whereas only 10% could be taken from other professions.

Aspirants from the protection police could not, however, freely decide whether to join the Gestapo or Kripo; they were allotted by the "assignment department of the police " at Potsdam to the Gestapo or the Kripo, according to requirements and, even, against their will. Incidentally, we are here concerned with protection police officials with 8 to 12 years service, as well as old police officials who had been in the police service already before 1933.

It was almost impossible for an official to break loose from the Gestapo, apart from general reasons such as death, sickness and dismissal because of a crime. During war the Gestapo, just like the entire police, was considered as being on active service and was subject to military discipline so that resignation was totally impossible. It was even prohibited to volunteer for military service at the front.

The same principles of assignment and retirement also applied to the institutions under the jurisdiction of the Gestapo, such as Border Police, Military Counter Intelligence, and Customs Police, not to forget the numerous Emergency Service employees who, at times, represented nearly one-half the total personnel strength.

From these statements mostly based on the testimony and affidavits particularly from the witnesses Best, Knöchen and Hoffmann, the following becomes apparent: The Gestapo consisted of a multitude of State organizations But in the case of such an organization one cannot mention members of that organization in the same way as members of a private organization. For that

H0212-0052

reason there was no membership of the Gestapo and even less a voluntary one; on the contrary, there was only a public-legal position of a civil servant.

The question also whether the aim and task of the Gestapo was criminal must be answered in the negative. The aim of the Gestapo -- just like that of any political police -- was the protection of thepeople and the State against attacks of elements hostile to the State against its existence or its free development. Accordingly, the task of the Gestapo is defined in paragraph 1 of the Law of the 10th of February 1936, (Gestapo Exhibit No. 7) as follows: I quote:

"The Secret State Police has the task to investigate all currents dangerous to the State and combat them; to collect and exploit the result of such investigation; to inform the government of the State and other authorities of results important for them, keep them informed and supply them with suggestions."

These tasks of the Gestapo, in their character, were the same as those of the Political Police before 1933, and as those of any Political police in foreign countries. What is to be understood by "currents hostile to the State" depends upon the respective political structure of a State. A change in the political leadership cannot retroactively render illegal the activities of a political police which have been directed against forces other than those hostile to the State. The activities of the Gestapo had been legally regulatedbby instructions issued by the State. Its tasks consisted, in the first place and mainly in the investigation of politically punishable actions in accordance with the general penal code in which connection the officials of the Gestapo became active as auxiliary officials of the Public Prosecutor's Department and it further consisted of the prevention of such actions through preventive measures.

Now, of course, the methods of the Gestapo are made the basis of serious accusations against it in three ways. They are even held against them as crimes. One method is the protective custody and transfer of persons to concentration camps. I know even when I only mention that name it radiates something like the cold breath of graves. But even then imposing of protective custody was governed by exact regulations. Protective custody

H0212 - 0053

which in addition is not a specifically German or specifically national socialist invention, was recognized as legal in several findings of the Reich Courts, the Prussian Supreme Administrative Court, and also Constitutional Courts.

A second method -- that of the so-called third degree interrogation -- must, to put it mildly, give cause to serious misgivings. On the other hand, this method was only rarely used (see particularly witness Dr. Best), and then only by order from the highest authorities and never to force a confession.

This method as well which we shall discuss further in connection with the discussion of the individual crimes was regulated by law and even during the time of the war (compare Gestapo Exhibit No. 60).

And, finally, the Prosecution is accusing the Gestapo particularly to the effect that it was not bound by law but rather that it acted purely arbitrarily. In reply to this, I should like to say that if it is established in two laws (dealing with the Anschluss of Austria and the annexation of the Sudetenland) that the chief of the German Police can take measures going beyond the existing laws, in that way arbitrary police power is not legalized; rather, we are concerned with a typical legal transfer of the authority to establish police law. Measures in the sense of a general sort which could be issued even if in the annexed countries no laws existed as yet in this regard but which were, nevertheless, binding for the population and the executive power of the police because the necessary authority had been granted by the head of the State.

The principle that no individual case could be carried out along arbitrary lines, but rather that exact regulations existed and were to be observed in all executive actions, was strictly adhered to. (Witness Dr. Best).

It never even occurred to Gestapo officials, at least not before the war, that they might be accused of arbitrary actions from abroad. The tasks and methods, which were for all the world to see legally restricted and which did not apply only to the members of the Gestapo, cannot be considered criminal by the world, a world which not only formally recognized

H0212 - 0054

the German Reich Government, who carried the sole responsibility in this matter, but a world which repeatedly showed its recognition to the German people.

If foreign countries had objected to the aims pursued by the Gestapo, it would not have been conceivable that numerous foreign police systems worked in close collaboration with the German Gestapo, a collaboration by the way which was not negotiated through diplomatic circles and that foreign police officials visited the German Gestapo, obviously with the intention of learning from it (compare Gestapo Affidavit Nos. 26 and 89). In any event, because of this, the individual Gestapo official must have considered his activity internationally recognized.

The aims, tasks and methods of the Gestapo remained constant even during the war. Insofar as other acts were intended for it, other than the acts described, they must be evaluated as acts foreign to the police and outside the organization. Later we shall deal with the Einsatzgruppen, their composition, their activity and their relation to the Gestapo.

Following the Indictment, I shall now turn to the questions as to whether the Gestapo participated in a joint plan for the committing of crimes and whether it participated as a deliberate part of the whole in the sense of the Indictment in the so-called Nazi conspiracy. In order to deal with these questions, it appears necessary to examine, first of all, just which crimes it can be proved were committed by the Gestapo.

In order to characterize an organization as criminal, just as in the case of an individual, only typical aspects may be considered; that is, only such actions and characteristics which are in accord with the peculiar nature of the respective organization.

Therefore, incidents cannot be used which, even though they took place within the organization, must be considered as foreign to the organization, in this case foreign to the police; and furthermore actions may not be cited which were committed by individual members.

In order to determine the fact whether these aspects are to be considered criminal, German law should be consulted, which does not deviate from the views held by other civilized countries in the designation of general criminality.

H0212-0055

In line with the method followed in the Indictment, I shall subdivide the crimes of which the Gestapo is accused into crimes against peace, war crimes and crimes against humanity.

Crimes against peace. In this connection the Indictment raises the accusation that the Gestapo, together with the SD, had artificially created border incidents in order to give Hitler a pretext for a war with Poland. Tow border incidents are cited; the attack on the radio station Gleiwitz and a feigned attack by a Polish group at Hohenlinden.

The attack on the radio station at Gleiwitz was not carried out with the participation of Gestapo officials. Witness Naujocks, who was the leader of this undertaking and who, however, did not belong to the Gestapo, has confirmed unequivocally that not a single member of the Gestapo participated in this action. Instructions for this undertaking emanated directly from Heydrich and were transmitted orally by him directly to Naujocks.

Instructions concerning the feigned attack at Hohenlinden were transmitted by Mueller, the Chief of Amt IV of the RSHA to Naujocks; however Naujocks, who directed this action, has expressly denied any participation by Amt IV.

THE PRESIDENT: Dr. Merkel, would that be a convenient time to break off?

(A recess was taken until 1400 hours.)

595

AFTERNOON SESSION

(The hearing reconvened at 1400 hours, August 23, 1946).

DR. MERKEL: Mr. President, I have heard that the French translation of my final plea is not yet available to the interpreters. For that reason I will have to speak more slowly in the interest of the interpreters.

I have already crossed another sixteen pages from my plea in order to comply with the rule that I should finish in a certain period of time.

THE PRESIDENT: No doubt your speech will subsequently be translated and we shall have those pages before us.

DR. MERKEL: Yes, Mr. President. I had gone as far as the testimony of the witness, Naujox, regarding the attack on the railroad station at Gleiwitz and the attack of that group near Hohenlinden. He stated that quite naturally it was not one of the tasks of Department IV of the RSHA to engineer border incidents. Mueller did not select members of Department IV for the carrying out of the latter border incident, but only individuals who were in his confidence for Heydrich did not trust the Gestapo with respect to secrecy and reliability.

Naujox stated literally :"I cannot identify Mueller with the organization of the Gestapo."

These border incidents were therefore not a concern of the Gestapo, but rather a personal concern of Heydrich, even to the extent to which Mueller participated.

The Gestapo has not been accused of other crimes against peace.

(b) War Crimes.

1. One of the gravest accusations raised against the Gestapo deals with the mass murder of the civilian population of the occupied countries through the so-called Einsatzgruppen. Not only the defense but the entire German people condemn the inhuman cruelties committed by the Einsatzgruppen. Those who committed cruelties like that have defiled the name of Germany and must be called to account.

Members of the Gestapo participated in the actions of the Einsatzgruppen.

H0212 - 0057

I should like to examine the extent t which the organization of the Gestapo in toto, can be held responsible for the criminal deeds of the Einsatzgruppen.

The Einsatzgruppen had to fulfill the tasks of the Chief of the Sipo and of the SD in rear echelon areas which meant that they had to safeguard law and order along the rear of the fighting unit. They were subordinate to the armies and liaison men were detailed to the armies.

The Einsatzgruppen were units which had been established for certain purposes. They were composed of members of the SD of the SS, of the Kripo, of the Gestapo, the Order Police of those who had to render emergency service, and of indigenous forces. The members of the SD of the Kripo and of the Gestapo were used without consideration for their former membership in their own branch.

Looking at it from the point of view of personnel, we are concerned here with the use of the entire police and of the SD, not with the use of the Gestapo alone. The actual participation of the Gestapo in the Einsatzgruppen amounted to approximately ten per cent. This, of course, was a very small number in comparison with the total figure of Gestapo officials. Being detailed to the Einsatzgruppen took place without any effort on their part, very frequently againsttheir will, but on the strength of orders from the RSHA. Upon being detailed to the Einsatzgruppen, they were eliminated from the organization of the Gestapo. They were exclusively subordinate to the leadership of the Einsatzgruppen which received its orders in part from the higher SS and police leader, in part from the High Command of the Army and in part from the RSHA directly. Any connection to the Home Department and to the organization of the Gestapo was finally severed through their being used by the Einsatzgruppen. They could not receive orders of any kind from the Gestapo, and they had been removed from the sphere of influence of the Gestapo.

These principles governing the Einsatzgruppen applied particularly to the Einsatzgruppen in the East which are the ones that have been accused of the most crimes and the most serious crimes. To them also applies the fact that the Osteinsatz was not a Gestapoeinsatz either in personnel or in the tasks given but an Einsatz of various units which had been set up especially for this purpose.

H0212 – 0058

The witness Ohlendorf testified to the same effect.

The fact that the Gestapo also supplied men for this does not justify the conclusion that it was responsible for deeds committed by the Einsatzgruppen. Nor is this changed by the fact that the Chief of Office IV, Mueller that is, the Director of the Gestapo within the RSHA had an important part in passing on all orders. He was acting here directly on behalf of Himmler and Heydrich. The activity of Mueller cannot be decisive in view of the fact that the overwhelming majority of the agents under him had no knowledge of the events. If that had been the case the Kripo or the Order Police (Ordnungspolizei) would have had to be held equally responsible for the events. But the Gestapo cannot be declared criminal because of Mueller's position in regard to the Einsatzgruppen any more than the Kripo -- whose Chief, Nebe, by the way, was himself the leader of an Einsatzgruppen in the East -- can be held responsible, on the basis of the participation of its Chief and individual members, for the mass executions undertaken by the Einsatzgruppen. Therefore, mass murders of the civilian population, like all other atrocities committed by the Einsatzgruppen cannot be charged against the Gestapo as such.

2. The next charge refers to the execution of politically and racially undesirable prisoners in camps.

I beg the Tribunal to take judicial knowledge of Point 2, as well as the third point, according to which the further charge is made against the Gestapo that together with the SD it sent prisoners of war who had escaped and who had been recaptured to concentration camps.

I continue on Page 38 of the original. I further have to deal with the concentration camps.

The American prosecution says that the Gestapo and the SD bear the responsibility for the establishment and distribution of the concentration camps and for the assignment of racially and politically undesirable persons to concentration and extermination camps for forced labor and mass muders; that the Gestapo was by law given the responsibility for administering the concentration camps; that it alone had the power to take persons into protective custody and to execute the protective custody orders in the state

H0212-0059

concentration camps and that the Gestapo issued the orders to establish concentration camps, to convert prisoner of war camps to concentration camps, and to establish labor training camps.

In the treatment of this point of the accusation the widespread error must be corrected that the concentration camps were an institution of the Gestapo.

In reality the concentration camps were at no time established and administered by the Gestapo. It is true that paragraph 2 of the order for the execution of the law on the Secret State Police of 10 February 1936,-- Gestapo Exhibit Number 8 -- says that the secret state police office administers the state concentration camps, but this regulation was only on paper and was never carried out in practice. It was rather the Reichsfuehrung-SS which was responsible for the concentration camps which appointed an inspector of concentration camps whose duties were later (1941) transferred to Amtsgruppe, Dept. Gor. D of the WVHA of the SS.

This is clearly confirmed among others by the witnesses Ohlendorf and Dr. Best and a large number of documents marked as the Gestapo Exhibit No. 40, and it is up to and including No. 45.

After Hitler's seizure of power in 1933 the SA and SS had independently established numerous camps for political prisoners. The Gestapo on its own initiative took steps against these unauthorized concentration camps, eliminated them, and released the inmates. Gestapo Chief, Dr. Diels, even brought upon himself the accusation that he was supporting the Communists and sabotaging the Revolution. (See Affidavit Number 41, testimony of the witnesses Vitzdamm and Crauert.)

Thus the concentration camps were never under the Gestapo. The inspectorate of concentration camps and the Economic and Administrative Departments, the WVHA remained independent agencies and their chiefs were directly subordinate to Himmler.

The order contained in document USA -492 does not affect the administration of concentration camps but it regulates -- in the interest of the prisoners-- the assignment of prisoners to the various camps, so that political

H0212 - 0060

prisoners would not be sent to camps, which, according to their structure and their form of work, were meant for hardened criminals.

Of the large number of documents which prove the non-participation of the Gestapo in the administration of the concentration camps, I should like to mention only one more : Gestapo Exhibit No. 38. This shows that all persons not mentioned there and thus all Gestapo officials regardless of their rank or position needed written permission of the Inspector of the concentration camps. If the concentration camps would have been subordinate to the Gestapo, there would not have existed a necessity to obtain this written permission to enter a concentration camp.

In each concentration camp there existed a so-called political department the position of which in the camp and its relationship to the Gestapo is a matter of conflicting views. In this political department were employed one to three criminal officials of the Gestapo or of the KRIPO. These officials did not form an office of the Gestapo or of the KRIPO; they rather were attached to the Commandant of the camp as political experts to fill police tasks in regard to individual prisoners. Above all, they had to conduct the interrogations of those prisoners against whom there was pending a case before the ordinary courts; this was done upon the request of the ordinary courts or the secret state police, or the criminal police. In regard to the power to issue orders they were exclusively subordinate to the commandant of the concentration camp. They had no influence whatsoever on the administration and conduct of the camp or on the transfer, discharge, punishments, and or execution of the prisoners.

As it can be seen, the concentration camps were not an independent institution of the Gestapo, but rather, institutions which served its purposes in the transaction of its police tasks. For the Gestapo they were the same as the regular prisons were for the courts or for the state attorney's , namely executive institutions to carry out the protective custody ordered by the Gestapo on which I shall dwell now.

The opinion is prevailing that a member of the Gestapo was in opposition to sending people to concentration camps just as he pleased.

This is incorrect. I shall again not deal with my plea about the opinion prevailing and beg the Tribunal to take judicial notice of it.

I shall go on to Page 43. the second sentence of the last paragraph. If one takes the trouble to examine the question what has been the numerical relationship of the cases when among the various available measures as instructions, warning, security fee and protective custody, the latter was actually chosen, one shall find that the transfer to a concentration camp was the least practiced means. At the beginning of the war approximately 20,000 people found themselves in protective custody in the concentration camps; half of them approximately were professional criminals, the other half political prisoners. At the same time there were found in the regular prisons approximately 300,000 prisoners, of whom approximately one-tenth-- and that means about 30,000 -- were sentenced for political crimes.

THE PRESIDENT: What evidence is there of those figures all the proportions ?

DR. MERKEL: Witness Hoffmann has testified that before the Commission. Larger use of the concentration camps was made by transferring there the professional criminals and the anti-social elements, particularly those who had been sentenced by the court to security custody, a measure which was ordered and executed not by the Gestapo (Compare Witness Hoffmann).

On the basis of Gestapo Affidavit No. 86 the maximum numbers of prisoners referred to the concentration camps by the Gestapo were at the beginning of 1945 about 30,000 Germans, about 60,000 Poles, about 50,000 subjects of other states. All other prisoners -- on December 19, 1945, the prosecution claimed that there were in the concentration camps on August 1, 1944, 524,277 prisoners -- had been referred there not by the Gestapo but by the criminal police, the courts, and various authorities, in the occupied territories.

The following parts of my brief which deal in detail with the question of concentration camps will also be omitted by me; and I again beg the Tribunal to take judicial notice of them. I shall continue on Page 50. approximately in the middle of the page.

H0212-0061

H0212-0062

It is correct that the Gestapo had established and maintained such work training camps and that it was responsible for the referrals to them.

The purpose of a work training camp is described by the periodical "The German Police" (Gestapo Exhibit No. 59):

"The purpose of the work training camps is to educate in a spirit or workers' discipline those who have broken their work contracts and those who shirk their duty, and to bring them back to their old jobs after that aim has been accomplished. These referrals are handled exclusively by offices of the State Police. To stay there is not to be considered a penalty, but an educational measure."

It is incorrect to say, as the prosecution has done, that only foreign laborers were put into the work training camps. They had been established in the same manner both for Germans and for foreign laborers, but even for employers who had transgressed their rights toward their employees.

As the maximum length of the stay which was established after thorough investigation in each individual case, originally 21 days, later 56 days, were stipulated, as contrasted to the verdicts of courts for breach of contract which ran from three months up to one year of imprisonment. Those who had broken a contract and were referred to a work training camp, in every respect found themselves in better conditions than those who were referred for sentencing to the courts. The referral was not included in the individual's court register of penalties, and in general, shelter, feeding and treatment in the work training camps was also better than in the prisons. The food consisted of the regular prisoners' rations supplemented by the additional rations for hard laborers; these rations were continuously submitted to inspection as far as quantity, quality, and taste were concerned, as is shown by the document Gestapo Exhibit No. 58.

On the basis of this state of facts, it is not possible to characterize the supervision of the foreign laborers and particularly the establishment and referral to work training camps by the Gestapo as a crime or even a typical crime.

H0212 -0063

6. Execution of Commandos and Paratroopers.

The next link in the chain of major crimes of which the Gestapo is accused is the charge that the Gestapo and the SD executed Commandos and Parachutists who had been taken prisoners and protected civilians who had lynched Allied fliers. What may be said in this connection?

Document PS-553 USA 500 -- it is a secret order of the OKW of August 4 1942 concerning countermeasures against Parachutists -- the combat of Paratroopers is characterized as the exclusive concern of the army, while the combat of "single parachutists" was transferred to the Chief of the Security Police and the SD. The latter task did not consist in the execution of the Parachutists. The transfer should serve only the purpose of establishing eventual sabotage orders of these parachutists and to receive news about the intentions of the enemy.

On October 18, 1942, Hitler ordered the destruction of all Commando groups (USA 501). This order was directed not to the German Police but to the German Army. Paragraph 4 of that order stated that all members of such Command falling into the hands of the army should be transferred to the SD. Nothing can be learned about any part played by the Gestapo in these measures against the Sabotage Commandos. If, however, the Gestapo would have been transferred to it, the execution of which cannot be accounted for by the Gestapo as such, since doubtless under any circumstances only a small number of individuals participated in it.

Besides, the following should be pointed out: As Rudolf Mildner in his affidavit of November 16, 1945 -- PS 2374 -- stated, an order was issued in the summer of 1944 to the Commanders and Inspectors of the Sipo and the SD to the effect that all members of the American and English Commando Troops should be surrendered to the Sipo for interrogation and shooting execution. This may be taken as a proof that at least up to that moment the Sipo had not shot any Commando groups, or a need for this order had not existed. Mildner continues to say that that order had to be destroyed immediately, which means that only the commanders and Inspectors of the Sipo could gain knowledge of it. Since the

H0212 - 0064

the invasion had started long ago and since the Allies relentlessly advanced in France, it was impossible to execute these orders actually, since there were not left any officers of the Sipo in the field of operations, which was pushed back continuously. Equally it is unlikely that that order, which presumably was issued by Himmler, ever became known to the mass of Gestapo members.

Above all, the Prosecution rests its case on an order of Himmler of August 10, 1943 (Document RF 1419, USA 333), stating that it was not the task of the police to interfere in controversies between Germans and bailed-out English and American terror fliers, and the Prosecution concluded from that that the Gestapo approved of lynch justice. However, it is of significance that the order of Himmler's was addressed to all of the German Police, above all to the order police. For in the case of the bailing-out of Allied aircrews, as a rule it was not Gestapo officials who made an appearance, but members of the order police, the Gendarmery, or the local police office. Only those branches of the police system were in charge of street patrols, and not the Gestapo.

As proven by the numerous affidavits, all of the Gestapo members were not informed of this order, but rather learned of it only through the statement Goebbels made over the radio.

The evidence given by the witness Bernd von Brauchitsch, first assistant to the supreme commander of the Luftwaffe, shows in a characteristic manner that that order was generally sabotaged. He stated: "In the spring of 1944 the civilian losses through air attacks rapidly increased. Apparently this made Hitler issue orders not only of defense but of measures against the aviators themselves. As far as I know, Hitler advocated the most severe measures. Lynchings were to be permitted most liberally. The supreme command and the chief of the General Staff did, it is true, condemn the attacks on the civilian population in the sharpest terms, but yet they did not desire the execution of special measures against the aviators; lynchings and the refusal to give shelter to the crews who had bailed out were to be refuted." And his further statement is of particular importance: I quote:

"The measures ordered by Hitler were not carried out by the Luftwaffe.

H0212-0065

The Luftwaffe did not receive any orders to shoot enemy aviators or to transfer them to the SD".

Actually the Gestapo officials, in the few cases when accidentally Gestapo members were present when allied fliers bailed out, not only did not kill them but protected them against the population -- compare Gestapo Affidavit No. 81 -- and if they were wounded they saw to it that the fliers were given medical care. The few instances when higher Gestapo officials ordered and executed the shootings of crews who had bailed out have already found their just penalty before the courts of the occupying powers. It would be unjustified to hold the whole of the Gestapo responsible for them.

7. The next point of the indictment states: The Gestapo and the SD brought civilians from occupied countries into Germany to bring them before secret courts and sentence them there.

H0212 - 0066

On 7 December 1941, Hitler issued the so-called Nacht-und-Nebel Decree. According to this decree persons who had transgressed against the Reich or against the occupying power in the occupied areas would, as a measure of intimidation, be taken to the Reich where they were to be put before a special court. If, for any reason whatsoever this was not possible, the transgressors were to be placed in protective custody in a concentration camp for the duration of the war.

As may be seen from the distribution list in Document 833-PS, this order went only to the offices of the Wehrmacht and not to the offices of the Gestapo -- with exception of Amt IV of the RSHA itself. The execution of this decree was a task of the Wehrmacht, not of the Gestapo. According to directives contained in Document 833-PS, it was for the Counter Intelligence Offices to determine the time of arrests of individuals suspected of espionage and sabotage.

In the Western areas, for they were the only ones concerned here, this order was to be carried out therefore by the Wehrmacht which exercised police power through its own men or those of the Security Police who were directly subordinated to the Wehrmacht Commanders-in-Chief.

Only to that extent was the Security Police participating in the execution of this order. The Gestapo, which was numerically very weak in the occupied Western areas, was only drawn in to the extent that the RSHA established a STAPO office, which had to take charge of the arrestees. Through the STAPO offices in agreement with the competent Counter Intelligence offices, the detail of the transporting off to Germany was determined and particularly whether a transport was to be conducted by the Secret Field Police, the Field Gendarmerie, or by the Gestapo. The Gestapo had no other tasks assigned to it by the Nacht-und-Nebel Decree.

Just how active Gestapo officials or Gestapo offices actually were in the carrying through of this decree has not been determined in this proceeding. On the contrary, according to the testimony of witness Hoffman, it has been established that Amt IV rejected this decree and that it was not applied at all in Denmark, for instance.

Since this decree was to be kept strictly secret, and since it emanated from the highest Wehrmacht offices, we may assume with assurance that only

H0212 - 0067

the most intimate circle of individuals, those charged with its actual handling, knew the contents of this decree and its significance. The officials handling, knew the contents of this decree and its significance. The officials of the STAPO offices charged with the transport received instructions to see to it that the arrestees were brought to a certain place in Germany without being told for what purpose the arrest had taken place, or on the strength of which decrees.

Perhaps if this was the case and details have not been established, you cannot make the entire Gestapo responsible for it; that prisoners were turned over to some offices in occupied territory in order to take them to Germany on the strength of orders.

The arrests and punishment, and the responsibility of the plan will also not be read by me, but I beg the Tribunal to take judicial notice of it. I should now like to continue on page 60 with the figure 10.

10. The next point of the indictment concerns the killing of prisoners upon the approach of Allied troops.

As a basis for this charge Document USA 291-RF-327 of July 21, 1944, has been submitted. Again it is an order by the Commander of the SIPO and the SD for the Radom district by which he informs his subordinates of the order of the Chief of the SIPO and the SD in the Government General that in the case of unforeseen developments which would make impossible the transfer of theprisoners, they should be liquidated.

The question to what extent these or similar orders have existed or were known elsewhere, and to what extent such orders were carried out, which is the main problem for me to establish, the participation of the Gestapo, has not been cleared. On the basis of the affidavits before me, and the statements by the witnesses Straub and Dr. Knochen, the Gestapo only in a few places had prisons of its own. As a rule, there existed only one police prison to be used by all local police branches. The administration and supervision of these police prisons was always the task of the local police administrator, in the occupied territories of the Army, too. At any rate, the Gestapo had no right to interfere with the conditions in which the prisoners found themselves. Therefore, it is unlikely that the Gestapo should have carried out the killings of the prisoners upon the approach of

H0212 - 0068

the enemy. On the other hand, it has been established with certainty that in many places the prisoners either were dismissed or were handed over to the Allied troops when they occupied the locality. (Compare Gestapo affidavits 12, 63, and 64).

May I be permitted to dwell on two cases which came up during the proceedings: The witness, Hartmann Lauterbacher has given evidence concerning an order in accordance with which theinmates of the prison at Hameln in Westphalia, supposedly had been killed upon the approach of the enemy. The person who issued the order, however, was not a Gestapo official, but the Kreisleiter of Hameln who, for doing so, was sentenced to seven years' imprisonment by the Fifth British Division, and those who were to execute that order were not Gestapo officials, but prison employees, who, however, refused to carry it out.

The second case concerns the camps Muehldorf, Landsberg, and Dachau in Bavaria. I refer to the evidence given by Bertus Gardes, the former Gaustabsamtsleiter under Gauleiter Giessler of Munich (USA 291). It states that in April 1944, the inmates of the Dachau concentration camp and of the Jewish work camps Muehldorf and Landsberg were to be liquidated; that means, killed by order of Hitler. It is dertain that the order was not given to the Gestapo and most of all, that both of these actions, due to the declining attitude on the part of the Air Force and the witness, Gerdes -- for their exoneration this must be stated here -- was not carried out. Thus, at least, in this case, crimes did not take place; the frightful planning of which alone would contort our innermost sentiments. What is of importance for the organization of the Gestapo, which I represent, is something to which it is my duty as its defense counsel to draw to your attention: The order was given to the competent Gauleiter in Munich, who discussed it with the head of the Gau Staff and the competent Kreisleiters. Not with a word was there any mention that the Gestapo should be used for its execution.

Regarding the next point, the confiscation and dividing up of public and private property, I beg the Tribunal to take judicial notice of it and I shall continue on page 63 of the original, number 12.

H0212 – 0069

12. The Prosecution accuses the Gestapo of having employed the third degree method of interrogation. I had already spoken about this when I discussed the question whether the methods employed by the Gestapo were criminal. At this point I have the following to say with reference to this accusation:

The documents submitted by the Prosecution made it perfectly clear that it was only permissible to employ third degree methods of interrogation only in exceptional cases, only under observance of certain protective institutions, and only by order of superior agencies. Furthermore, it was not permissible to use these methods in order to force a confession; they could only be employed in the case of the refusal for giving information vital to the interest of the State, and finally, only in the event of the existence of certain evidence of the perpetration being available.

Entire sections of the Gestapo like the counter-intelligence police and border police have never carried out third degree interrogations. In the occupied territories where occupation personnel were daily threatened by attempts on their lives, more severe methods of interrogation were permitted. If one believed that in this manner the life of German soldiers and officials might be protected against such threatening attempts. Torture of any kind was never officially condoned. It can be gathered from the affidavits submitted, for instance, numbers 2, 3, 4, 61 and 63, and from the testimony of witness Dr. Knochen, Dr. Horrman, Straub, Albath, and Dr. Best, that the officials of the Gestapo were continuously instructed during training courses and at regular intervals, to the effect that any ill-treatment during interrogations, in fact any ill-treatment of detainees in general, was prohibited. Violations of these instructions were prosecuted by ordinary courts and later by SS and Police Courts, in fact, in the strictest manner. (See amongst others, Gestapo affidavit No. 76).

Testimony implicating in this respect from the witness Rudolf Hess, USA-819, the camp commandant at Auschwitz, has been credibly rectified by witness Rudolf Milner, the former chief of the leading Gestapo department, Kattowitcz, in that he stated under oath (See Gestapo Affidavit Number 28), that a STAPO or KRIPO criminal official had been posted to every main concentration camp who had clearly defined orders, none of which included third

H0212 - 0070

degree methods of interrogation.

Then I beg to take official notice of the subsequent stages and I shall continue on page 65 with the discussion of the plans of which the Gestapo is now accused. I turn to my third and last group -- crimes against humanity.

H0212 - 0071

The prosecution alleges that the Gestapo, together with the SD, had been the foremost instrument for the persecution of the Jews. The Nazi regime had considered the Jews as the chief obstacle for the police state, by means of which it had intended to pursue the ends of aggressive war. The persecution and extermination of Jews is supposed to have served this aim too. The Nat[illegible]al Socialist leaders had regarded anti-Semitism as the psychological spark to inflame the populace. The anti-Jewish actions had led to the murder of an estimated six million human beings.

Truly a shattering accusation. What has been unveiled during this trial, and confirmed by the witnesses Hoess and Ohlendorf, forms the basis of a guilt which, unfortunately, will forever adhere to Germany's name. Yes what must still be examined after these sad facts are ascertained is the question in how far the Gestapo has participated in this persecution and extermination of the Jews.

An attitude leading to correct results is only possible if differences are made regarding the activity of the Gestapo, taking into consideration the point of view of time.

After the seizure of power, the Hitler Government had published a number of laws punishing the Jews. As far as these legal regulations contained penal clauses, possibly necessitating the employment of force by the police, the Gestapo may, under certain circumstances have been connected with them. Infringements of such penal laws by Jews were comparatively few, and only the Nurnberg laws, announced in 1935, caused increasing police activity, whereby, however, during the first period, every case was handed to the proper courts for the passing of proper sentences. A change only occurred in the last years of the war. That the Gestapo began to act in these cases cannot be held against them; because it, too, had to comply with the existing laws of the State, that is to say, had to obey the orders of the State just like the soldier must obey his orders.

Apart from that, the administrat[illegible], such as the Administration of the Interior of the Reich Finance Administration and the communal administration, have become active against the Jews to a much larger degree than the Gestapo; that is to say, both regarding their personal legal status as well as their

H0212 - 0072

property, houses, etc., without being accused here.

Through the excesses of November 1938, the Jewish problem became considerably more acute. It has been ascertained beyond doubt that this revolting action did not originate in the Gestapo. In fact, the prosecution do not implicate the Gestapo in this connection, or only by saying that they had not intervened. Information on this point is contained in the testimony of the witness Vitzdamm, according to which during the conference on the 9th of November, 1938, in the evening, in Munich, with Gestapo chiefs present, Heydrich had declared quite openly that this action did not have its origin in the Gestapo. Over and above this, he explicitly forbade the Gestapo to participate in the action, and gave instructions to the Gestapo chiefs present to return to their departments at once and take all steps to stop the action. The contradiction contained in this testimony, and the contents of Heydrich's teleprint letter, sent to all Stapo departments during that night (Document USA 240), can be explained by the fact that between this conference of Heydrich with the Gestapo Chiefs and the issuing of the order, a development had taken place which could only be limited but no longer rescinded. Then the Gestapo offices received Heydrich's circular, the holocause of senseless destruction already had swept over Germany. Nothing remained to be done but the prevention of further excesses; that was done.

In this connection I refer also the affidavit No. 5 of witness Luitpold Schallermeier, which also has been submitted by the defense counsel for the SS, stating that Himmler himself had dictated the order to the Stapo offices and revealed his conversation with Hitler from which one learned that Hitler had ordered the safe keeping of Jewish property and the protection of the Jews. As shown by the evidence given by the witness Vitzdamm and as proved by the numerous other affidavits, this order was carried out universally. I refer to the Gestapo affidavits Nos. 5, 6, 7 and 8.

The arrest of 20,000 Jews which followed the excesses was caused by Himmler (Document USA 240) and was as a rule carried out by the Kreis and local police authorities. The overwhelming majority of the Jews, however, were not transferred into concentration camps and were released gradually. This is proven for the entire territory of the Reich by Gestapo affidavit No. 8.

H0212 – 0073

For the first time, the Gestapo was burdened by a task foreign to its nature by the arrest of the Jews in November, 1938. The Gestapo -- as shown by the evidence given by the witnesses Dr. Best and Hoffmann -- would never have executed or suggested these arrests which were considered unnecessary from a police point of view. The fact that the arrested Jews were soon discharged, justified the assumption of the Gestapo officials that it was but a one-time gesture and not the overture for worse to come.

The Jewish question which the National Socialist administration had elevated to a point of its program originally was to be solved by the emigration of the Jews. For this reason, in 1938, there had been founded in Vienna the central office for Jewish emigration which succeeded in the emigration of a large number of Jews. During the war, too, the emigration was continued according to plan as shown by the documents USA 304 and 410. In addition to it, there started the evacuations of Jews which were carried out in accordance with a detailed decree of the Chief of the German Police. On the basis of that decree, the local Stapo offices had to prepare the evacuation and to cooperate with the Jewish communities. To their task belonged particularly the equipment of these evacuees with clothing, shoes, tools, etc. In most cases the transports were not accompanied by Gestapo officials; the personnel was rather composed of members of the Security Police, the Criminal Police, and the Gendarmerie. The destination was not announced in most cases. The evacuations were carried out without friction and unnecessary harshness.

From a humanitarian point of view one might well regret these evacuations of Jews most profoundly; yet the part played by the Gestapo in them consisted in the carrying out of the decrees and orders originating from the highest authorities. Actually, the competency of the Gestapo in regard to the Jewish question had not at all the importance generally attributed to it. In the Jewish department of the Gestapo, both in the RSHA and in the individual Gestapo offices, only a very few employees were active.

In 1941 Himmler decreed that the Jews in Germany should be isolated in Polish Ghettoes. This resettlement of the Jews was the task of the Higher SS and Police Leader and was carried out by the regular police.

H0212 - 0074

When Hitler's policy toward Jewry up to 1941 aimed only at the elimination of the Jews from Germany by emigration and later evacuation, it gained in sharpness after America's entering the war. In April 1942 Hitler ordered the "final solution of the Jewish question", i.e., the physical extermination, the murdering of the Jews. The proceedings have shown in how terrible a manner this order was carried out. The tool which was used by Hitler and Himmler for the carrying out of that order was SS Obersturmbann-fuehrer Adolf Eichmann, who, with his Jewish department, in an organizational manner belonged to Amt IV of the RSHA, who however actually had an entirely independent and autonomous position with the Gestapo. The preparation and carrying out of the order to murder the Jews was kept strictly secret. Only a few persons knew the order to its full extent. Even the members of Eichmann's office were left ignorant on the order and learned of it only gradually. The evacuation and the transfer into the extermination camps was carried through by Eichmann's Sonderkommandos. They were composed of native police, almost exclusively regular police. The police were not permitted to enter the camps but were replaced immediately upon arrival at the railroad station of the point of destination. In the camps themselves the circle of persons carrying out the murder orders was kept small. Everything was done to conceal the crimes.

This description based essentially on the evidence of the witness Knochen, Wisliceny and Dr. Hoffmann, is supplemented in a surprising fashion by the evidence of Dr. Konrad Morgen. He declared that three persons were charged with the extermination of the Jews, Wirt, Hoess and Eichmann.

Wirth, the former criminal commissioner of the Criminal Police in Stuttgart, known as "Murder Commissioner for terroristic investigation methods", had for his special task his headquarters together with his staff in Hitler's Chancellery. His task was at first the mass extermination of insane persons in Germany, then, secondly, the extermination of Jews in the Eastern countries. The Commando which was set up by Wirth himself for the purpose of extermination of Jews was known as "Action Reinhard", and was extremely small. Before the beginning of the action Himmler personally took the oath of the members, and declared explicitly that any one who would say something about the action would

H0212-0075

be put to death. This Commando Reinhard stood outside any police office. I did not belong to the Gestapo and were a uniform and carried the credentials of the Security Police in order to allow members of this Commando free circulation in the rear of armed forces. This Commando started its activities with the extermination of Jews in Poland, and extended later on its diabolic work to further work within the Eastern territories, by setting up of special extermination camps in inconspicuous places. By a hitherto unknown camouflaged system these camps were run by Jews themselves. The fact must be stressed that it was the Security Police of Lublin, which reported to the RKPA Wirth's misdeeds and thus enabling the discovery of these hideous crimes. This fact corrects the testimony of Hoess, who declared that the extermination camps of Maidanek and Treblinka had been under the orders of the Security Police. In fact, they were under Wirth.

According to Dr. Morgens testimony, Auschwitz was made a center of mass extermination of Jews by Hoess at a later date. He is said to have been called an unworthy pupil by Wirth because of his methods.

According to Dr. Morgen's testimony, the organization Eichmann, was separated from these two Kommandos. That task consisted of deporting of European Jews to the concentration camps. According to witness Wisliceny, Eichmann had personally full powers and was personally responsible for the carrying out of the extermination order. He established special Kommandos in the occupied countries. Though economically under the Chief of the Security Police, they could not receive any instruction or orders from them.

Both organizations, Eichmann and Wirth, were now amalgamated but this was done in such a way that only very few people of Eichmann's surroundings know about it. In this way and furthermore by the use of Jewish collaborators, the knowledge of these killings was restricted to very few Germans and thus the secret maintained.

The declarations of witnesses and affidavits might diverge as to the details in the organization of the extermination program, but one thing is clear beyond any doubt; the Gestapo as a whole did not participate in this horrible mass murder and with very few exceptions, could and did not know anything about it. The few leading persons who knew about it, such as,

H0212 – 0076

Eichmann, Mueller, Himmler, kept strictest silence about their tasks and intentions, and in death, they took their secret with them. This is confirmed most clearly by Dr. Morgen's testimony. For how could the limitation of knowledge to the above mentioned group of persons be made more evident than by the fact that the criminal police itself started investigations and discovered the crimes and that even the Chief of the Security Police and Nebe were astonished, while Mueller seemed to have been informed, as his behavior indicated. But this being the case, how can it be assumed that the minor Gestapo official knew about the secret?

In regard to the persecution of churches and the shooting of hostages, I ask you to take note of the statements. I continue to page 73 Roman Numeral Four.

I have not dealt with the individual crimes of which the Gestapo as a collective organization have been accused by the Prosecution. As to the question whether the crimes as far as they were permitted by Gestapo-men have to be blamed onto the entire Gestapo, I finally come to the following result, so far as I did not arrive at it when dealing with individual crimes.

The Gestapo was a public Reich authority bound in their aims and activity to the existing laws. The fact that the Gestapo officials during the twelve years of the existence of that institution essentially carried out quite normal police work is not sufficiently taken into consideration. The working day of most of the Gestapo officials was occupied with official business which is in no way in reference to the crimes alleged here. Third degree interrogations were only carried through by a small fraction of the officials; the decree with reference to that was in the safe of the departmental chief marked "Secret Reich Matter". Therefore, the average working day of the Gestapo officials presented a completely different picture as is imagined. Furthermore, the officials by the exploitation of the traditional duty of obedience have been used for measures by the highest governmental posts which went beyond the actual aims of the Gestapo. Thereby it is of decisive importance that only a small part of Gestapo officials participated in these tasks alien to police duties.

H0212 - 0077

since the most serious accusations against the Gestapo refer to its activity in theoccupied territories, it follows that only a comparatively small percentage, at most 15 % of the executive agents, but not the Gestapo as a whole, can be charged with it.

For this question, according to the generally correct opinion, it is of special importance whether the aims, tasks and methods of the organization or group were public knowledge. The publication, or, in other words, general knowledge, must include two things: knowledge of the objective fact of the criminal action, and the knowledge of the illegal, criminal character. The judgment of whether this knowledge existed in both senses has to be based on sound human understanding. It is to be assumed, even if the individual members of the organization did not learn anything of the criminal incidents

I may make a few fundamental additions to what I have already said about the individual crimes.

The reason why the Gestapo as a whole had no knowledge of the capital crimes committed lies in the following: Hitler from the beginning knew how to surround himself with a veil of secrecy to conceal his true intentions, to see to it that no minister and no department and no official learned too much about any other. The well-known Fuehrer Order No. 1 which was submitted as Gestapo Exhibit No. 25 isonly the actual realization of a long-established practice.

In view of the demoniacal influence which emanated from Hitler, in view of the feeling of inviolability of all his orders, which can be explained only through the demoniacal aspect of his character, and in viewof the fear of the serious consequences of life and limb in the event of failure to carry out a so-called Fuehrer Order, was there any wonder that precisely this secrecy order was scrupulously observed?

So, it is really not incredible that almost all defendants and witnesses examined here have actually just learnedof all these Heinous crimes. It is significant that, for example, thedriver of a special vehicle was condemned to death by the SS and Police Court in Minsk because in an intoxicated condition he had spoken about the purpose of the vehicle against his orders. Gestapo affidavit 47. Even a Dr. Gisevius had to admit that Heydrich endeavored to keep his actions secret, and the defendant Jodl characterized the

H0212 - 0078

system of secrecy in the most striking manner, with the words that the secrecy had been a masterpiece of Hitler's art of concealment, and a masterpiece of deception by Himmler.

It is a recognized legal principle that ignorance through one own's neglect is not sufficient in crimes; therefore, it is necessary, in order to declare an organization criminal, that the members of this organization actually knew of and approved of the criminal aims and methods. But that cannot be proved in our case, and cannot be assumed according to all the facts established during the trial, no matter how strange the contrary assumption may seem to a person looking backward today, who cannot appreciate conditions in Germany.

In the question of whether the terrible crimes which were actually committed are to be ascribed to the Gestapo as a whole, the further fact must not remain unconsidered that the members of this commission did not act on their own initiative but on orders.

Those concerned contend, and can prove by witnesses, that if they had refused to carry out orders, they would have been threatened not only with disciplinary proceedings, loss of civil service rights, and so forth, but also with concentration camps, and, on war assignments, with court-martial and execution. Do they thereby invoke a reason for clearing them of guilt?

This question is to be examined with a view to the so-called state of occupational emergency. The state of occupational emergency is not a category of written law. Rather it represents a concept which cannot be dispensed with in legal life. Where written law is not adequate, as when a state of emergency exists, sensible and practical considerations must fill up the gap. Public opinion approved this, and judgment of law and jurisprudence have recognized the so-called extra-legal state of emergency as a reason for absolving from guilt. It is true! Cowardice is not a virtue; but it is equally true that heroism and martyrdom in the world of human beings are the exception. Should the Gestapo members form this exception? Could one, from a purely human point of view, really expect them to take upon themselves loss of livelihood, family suffering, concentration camp, and perhaps even a disgraceful death? Besides, the resistance movement in the occupied territories, in their killing of members of the German occup

H0212 - 0079

tion, repeatedly referred to the orders of their superiors and to the state of emergency of the terrorists under these orders.

Therefore, in our case as well, I should like to consider that there was actual danger for life and limb of the perpetrator in the sense of Paragraph 54 of the German Penal Code. Here there existed what Justice Jackson called "physical compulsion".

Moreover, in Germany every official was and is trained in the conception of the strictest obedience to orders and instructions from higher authority. Perhaps as nowhere else in the world the official in Germany is filled with the thought of authority. He was trained in the attitude, correct in itself that a state dissolves if the orders issued by it are no longer followed, and that thelogical result of the denial of state authority is anarchy.

Added to this deep rooted attitude was the demoniac atmosphere which made particularly the little officials tools without a will of their own. All of these motives were added to the threat emanating from the very nature of the job, and they all together created an occupational emergency so depressing that they didn't retain the freedom of decision to examine a criminal order as to its legal and moral evaluation and to refuse obedience. Taking these conditions into account it hardly appears justifiable to attribute these proved crimes to the totality of the Gestapo so as to declare the Gestapo criminal.

The Prosecutors state -- and this is just the very origin and aim of the indictment -- that the crimes were not isolated acts committed independently from each other, but rather parts or aspects of a criminal policy, either as part of a common plan or as means of carrying out that common plan. The contention is that this very plan was directed towards the unloosening and conduct of an aggressive war. The aim of that war was the enslavement of Europe and the peoples of Europe to gain living space. Everything important that was carried on within that conspiracy characteriz as such by the indictment is described as having had only one aim and purpose, to secure for the Nazi state a place in the sun and to push all internal and external adversaries into the darkness. The very essence of the individual crimes was the intentional participation in theplanning and

H0212 - 0080

carrying out of the plan. The crime of the individual consisted in his having joined the common plan of the conspiracy. It was claimed that plan and purpose of the conspiracy were universally known.

Therefore, no one could claim that he was without knowledge of the conspiracy.

These contentions of the indictment aim above all at the individual defendants, but supposedly they are also valid for the indicted organizations It is claimed that the role played by the Gestapo within the conspiracy consisted in aiding the Nazi conspirators by creating a police state, set up to break every resistance, to exterminate Jews and faithful Christians, as well as political undesirable persons, as the main terrorists of the resistance movement; furthermore, to enslave the employable inhabitants of foreign countries and to eliminate and suppress by cruelty and horror all of those who might resist German lust of conquest within the Reich or in the conquered territories.

In re-examining the individual crimes, whether they are to be considered as assistants to the crime of conspiracy against world peace, it will be recommendable to study the activity of the Gestapo before the war, and to examine its work during the war in regard to theindividual characteristics. Without repeating myself unnecessarily I believe I can state that the tasks and methods of the Gestapo before the war were the expressions of state institutions existing in all civilized countries without which the state cannot even exist; there existence means in no way an aggressive war of the planning of any other conspiracy against world peace. The individual Gestapo officials filled his duty as he had learned as a civil servant. Equally, in the upper strata of thepolitical police it is unlikelty that another thought should have been present other than to guarantee peace and security within the state should have been present. One must not identify the knowledge and action of the Gestapo with those of Himmler and Heydrich, those men alien to the police. If thosemen acted only on the basis of political considerations their subordinates cannot be blamed for it. Taking into account the well-known system of secrecy, the individual Gestapo official and the overwhelmning majority of all Gestapo members could

H0212 - 0081

not have theleast knowledge that their work aimed at the preparation of an aggressive war and created the basis for it. I believe that every Gestapo official when hearing that contention or when facing the question about the knowledge of the attack of world peace would not even understand it.

One can burden the members of the Gestapo with the responsibility for the crimes committed during the war only when those -- apart from their general knowledge -- were committed only with the knowledge of participating in a plan to bring to a victorious ending the aggressive war, even by the employment of the most horrible means in conflict with international law. Such proof cannot be carried out successfully either. The first condition again would be that the Gestapo officials who participated in the crimes knew that the war which we waged was an aggressive one. Yet we all know that a propaganda master fully carried even to the remotest hamlets, never talked in other terms than of a war forced upon us criminally, that Hitler himself always spoke of the war which the others desired, not we. Although it may have been that some considering people, who had not entirely lost their sound judgment, had their doubts, and might have thought that our government was not free of guilt, yet in face of the greater probability of the opposite it might not be stated that this opinion or certainty filled all Gestapo members.

H0212 - 0082

The prosecution assumes, and quite unjustly, in my opinion, that every activity of the Party, but, above all, its fight against the Jews, individuals holding different political opinions and against the churches, was derived from the intention and the plan to eliminate all tendencies which opposed the war of aggression it proposed. The national socialist struggle against Jewry sprang from the doctrine of anti-semitism which had become a point of the Party program, a doctrine which saw an element destructive to the State in all Jews. Because this fight was not a moral one, the Christian churches protested against it with right. This way, in turn, the fight of the Party against the Church may be explained at least to a large extent, and the steps taken by the Party against those who hold different political views - especially against the Communists - in all probability took place, first of all, in order to maintain and to protect the State; in any event, that was the way in which the German people and therefore the Gestapo officials looked upon the state of tension which existed. It did not occur to anyone to see in it the source of a conspiracy against world peace in this relationship.

One last point, however, and, perhaps, the most profound, must not be overlooked in this connection. The German soldier, the German official, the German workingman, and every German man, knew that the war had placed us in a situation which meant a struggle to the death. The war in its gradual stages showed us with terrifying clarity that it was a question of "to be, or not to be." Indeed, it would mean that you would misjudge the soul of the German people if you wanted to overlook the fact that every decent German at this juncture felt himself obligated to do everything which was expected of him in order to save his country. And, when we judge the behavior of the German people and its political police, we must take these points of view into consideration in order to do them justice.

The prosecution has expressed the fact that the court is in a position to establish a restriction in its decision on declaring the organizations collective -- be it with reference to certain sub-groups, or be it with reference to time. The organizational structure, the variety of the groups of individuals active within the Gestapo, and the results of the evidence presented in reply to the assertions made by the prosecution concerning the criminal activities of the Gestapo, form the basis for a possible limitation

H0212 - 0083

either of personnel or of time - which I should like to have taken into account should the High Tribunal arrive at a verdict of guilty.

The following groups of persons are, doubtless, not to be imputed with a punishable participation in the crimes listed under Article 6 of the Charter for neither did they themselves commit crimes, nor did they intend to commit crimes or realize such intent, nor could they have had knowledge of criminal plans and activities and, in fact, did not have knowledge to that effect.

First, administrative officials. They did not receive their practical instructions from the office of the Secret State Police or from Amt IV of th RSHA, but rather from Amts I and II of the RSHA whose members do not fall within the charges raised against the Gestapo. The offices of the administrative offices, and the offices of the Executive officials were never situated next to each other. Administrative officials had no insight into the activities of Executive officials -- in part because of the fact of secrecy which has been mentioned many times and which was observed especially strictly in the Gestapo -- in part because the Administrative officials were looked upon by the Executive officials as merely belonging to the Gestapo nominally, and were treated with marked reserve.

The various designations of duties such as Police Inspector, for the administrative official of the Police, and criminal inspector of the executiv must be pointed out, to stress the fundamental difference between these two categories of officials.

If the prosecution argues that the activities of the executive were conditioned by the activities of the administrative officials, this argument is as invalid as if I said that the activities of the officials of the Reich's Finance Ministry which secured the funds for the salary and other expenses of the Gestapo has been the cause of the activities of the executive officials.

Employees and wage-earners. Chief Justice Jackson, in his speech of the 1 March 1946, excepted two groups of persons from the indictment against the organizations. Firstly, the SA Reserve, and then the office employees, stenographers, and general laborers, of the Gestapo. A part of the groups of persons which I have dealt with, are excepted from the indictment, but I deem it nevertheless my duty to point out that this group of persons, because of

H0212 - 0084

their subordinate positions, as well as the resulting impossibility of acquiring detailed knowledge of the Gestapo's activites, has been very justly excepted from the indictment. It is my opinion that all employees and wage-earners which includes, for instance, drivers, as far as they were not officials, telotypists, telephonists, draftsmen, and interpreters, are to be included into this exceptional group, no matter whether membership in the Gestapo was on the basis of a free labor contract, or whether the direction of the labor office permitted the selection of a different work place.

The witness Hodel has made detailed statements with reference to the activities of the personnel dealing with technical informational work. They show clearly that they had nothing in the least to do with executive work; that they were not in a position to have any knowledge about the activity of the executive personnel, and that on the basis of their own activites, they did not have to realize that they belonged to an organisation whose activity might be criminal. An exceptional treatment too is justified with reference to this circle of persons.

The same applies to groups of persons who in the years 1942 to 1945 on the basis of superior orders were collectively transferred into the secret state police. They are the 51 groups of the secret field police and the military counter-intelligence service including foreign censorship and telegrpph censorship offices who were subordinated to the Gestapo by the Wehrmacht, the border protection department, and the Reichs Ministry of Finance.

THE PRESIDENT: Dr. Merkel, were you referring to 51 groups? Can you tell the Tribunal where those 51 groups are specified? In what document?

DR. MERKEL: The testimony of Krichbaum who was examined in the Commission. Even with reference to these groups there cannot be the slightest doubt that neither the fact of voluntary membership nor the knowledge of criminal aims as alleged by the Prosecution nor the fact of an inclusion applies to them. The individual person no matter what rank or office he held was powerless when he was collectively transferred on the basis of an order which emanated from the highest offices of the Wehrmacht and the State. Disobedience of this order would have been punished by

H0212-0085

death because of desertion or military disobedience.

There still remains the group of the executive officials. The executive officials originated basically from the personnel of the political departments of the police presidents' offices prior to 1933. Those officials who partly even before 1914 and currently up to the year 1933 were combatting the various interior political enemies of the various

H0212 - 0086

governmental systems and the governments which came into power were almost without exception absorbed into the political police of the new regime. Only those officials were excepted who had been particularly active as opponents of National Socialism. But even these were only dismissed in rare cases. For the most part they were transferred into the criminal police. The replacement of personnel for the secret state police was carried through in a manner where officials and candidates were transferred into the Gestapo from other police departments without previously being consulted except, of course, when they themselves made an application to that effect. In the same manner, officials of the protective police with a long and efficient record were transferred into the criminal or state police after nine years of service if they wanted to remain in the police service. They were unable to use any personal influence in being transferred to one department or another.

With reference to the defense and the border police, I can establish that the members of these groups of persons who were included as officials of the executive of the secret state police could have nothing whatsoever to do with the crimes of which the Prosecution is accusing the Gestapo. The counter-intelligence police exercised police activities as they belonged in the same way in every civilized state to the most noble tasks of the police of their affiliated institutions. It is clearly established through the testimony of Best and through Gestapo affidavits 39, 56, and 89 that the counter-intelligence police had a very considerable amount of personnel, and in view of the particular duty of secrecy in the interest of the defense of the country, a transfer into other departments of the Gestapo or other police branches was not permissible as a rule. The counter-intelligence police was mostly isolated within the Gestapo offices which excluded official contact with other departments. The cases handled by the counter-intelligence police were always submitted to the regular courts for decision.

The function of the Border Police from 1933 to 1935 was the same as in the preceding period and the same as carried out today by the officers of the new border police. The officers of the border police did not carry out third degree interrogations, nor did they submit applications for referrals to a concentration camp, nor did they, who in their majority had served for

H0212 - 0087

a long time in the border police, participate in any persecution of the Jews, nor could they, due to the special character of their use, participate in any other crime with which the Gestapo is charged.

These two groups of the Gestapo numbered five to six thousand men. On the basis of the figures which I have previously submitted for the strength of the various groups of the Gestapo, I arrive for the period of its largest personnel at a maximum figure of approximately 75,000. The executive officials with a strength of approximately 15,000 men therefore constituted merely a portion of 20% of the total strength. If one deducts from that the 5 to 6 thousand men of the counter-intelligence and border police, there remain 9 to 10 thousand men of the executive which equals 12or 13 per cent of the total strength.

I believe I have already given the reasons why the Gestapo as a subordinate part of the State organism cannot be sentenced at all, for reasons which are based both on natural law as well as the common state law of all peoples. But even if those legal objections were not existing, a sentencing could not take place since the characteristics for criminality as Chief Justice Jackson outlined them on February 28, 1946, are not given in the case of the Gestapo. And even if all these arguments were not valid, I ask: Is it possible that an organization as such should be declared criminal simply because part of its members possibly can be held responsible for the committing of crimes --including even those members who certainly did not act in a criminal manner and had no knowledge of criminal deeds?

I am referring to the summary of affidavits given by a large number of the former members of the Gestapo presently in internment camps. I also would not wish to overlook to draw your attention to the numerous acts proven by those affidavits which aimed at the sabotaging of certain evil orders issued by the head of the State.

When turning now to an argument covering all possible eventualities and dwelling on the question of time limitations, I may be much briefer.

One cannot speak at all of a uniform leadership of the Gestapo in the entire territory of the Reich and of a uniform direction of its will at least up to the appointment of Himmler as deputy chief of the Prussian Secret State Police, that is up to the spring of 1934. With a short interruption

H0212 - 0088

Ministerialrat Diels had been active in Prussia as substitute head of the Secret State Police under Goering. It is impossible to construe connection between Diels and the illegal tendencies as they became apparent after the outbreak of the National Socialist Revolution. I may refrain and I have to, due to the pressure of time, from pointing to the real guilty ones in those excesses, compare Affidavit Number 11.

As a state institution the Gestapo had no part in the events of June 30, 1934. In the following period of time, up to November 9 , 1938, the Gestapo did not play any role which would justify the charge of criminality. The arrest of 20,000 Jews on November 10, 1938, which the Gestapo was ordered to carry out

H0212-0089

was, as Witness Best testified, a matter foreign to the Police. Thus it is impossible to fix that date as the beginning of the criminal activity of the Gestapo. It must be stated that at least up to the beginning of the war the criminal character of the Gestapo cannot be proven.

Does that basis of judgment change for the duration of the war ? I have already stated that the activity of the Einsatzgroups and of the Sipo offices in the occupied territories cannot be charged to the Gestapo since both the leadership, the organization, the personnel, and the order of command of those offices would not permit a charging of responsibility to the Gestapo.

There is no doubt at all that if the Gestapo should be sentenced, considerable time limitations have to be made. I sketched in a few lines how unsurmountable would be the difficulties existing for a time limitation.

CONCLUSION

And by this Gentlemen of the High Tribunal, I would like to complete my remarks concerning the indictment of the Gestapo. I didn't consider my task to excuse crimes and evil deeds and to whitewash those who disregarded the laws of humanity. But I desire to say those who are innocent, I desire to free the road for a sentence which will dethrone the demoniacal powers and which will reconstitute the moral order of the world.

While glancing through the annals of European history throughout the last decades and centuries, we read again and again that force conquered justice among the nations and that the spirit of revenge beclouded the thinking of humanity.

A place which was concluded remained merely written: it was not accepted into the hearts of the people. Pacts were made ceremonicusly only to be broken. Promises were given and not kept. We read in this book of revolutions of peoples, of economical need, of unspeakable sorrow. The last page of this book, however, are written in blood, in the blood of millions of innocent people. They speak of unimaginable cruelties, of limitless disregard of holy human laws, and of mass murders which caused suffering to the peoples of Europe.

H0212-0090

In this book, Gentlemen of the High Tribunal, with your judgment, you are writing the last chapter, a chapter which is to be the end and the beginning -- end because it draws the final line under the gruesome battle of demoniacal powers against the moral order of the world, and the beginning because it is to lead into a new world of liberty and justice.

This justice, I hope, will be the soul of the judgment as it is engraved in golden letters on the floor of the Palace of Peace in the Hague: Sol justitiae illistra nos. Do not, therefore, make your judgment merely with the cold logic of your learned mind, but also with the kind love of a seeing heart. This applies especially to the judgment against the organizations; for a condemning judgment must be unjust, since among the millions whom it affects there are also millions who are gukltless. They would all become victims of desperation; they would all be despised and damned, and would perhaps even deem those happy who are now resting, in their graves as victims of National Socialism.

The present world needs peace, nothing but peace. To extend the consequences of a judgment to a large , guiltless part of the German people would be working against world peace, which, in any event, rests on an unfirm basis, and would thereby repeat Hitler's idea to punish a people, the Jewish people, collectively and to exterminate them mutatis mutandis.

Out of this injustice against the laws of God and of Nature arose the indignation of the creature thus tortured - and the right to have the evil doers called to account. Hitler and his regime proved the words, "Hodie mihi, cras tibi."

From the history of the Jews in the Old Testament we know that God would not have destroyed the City of Sodom if but one just man had lived there. Is not God's truth contained in these wrds-- that a group may not be punished even if but one meber of the group deserves no punishment ?

Then, Members of the High Tribunal, place your signatures under a verdict which will stand up before History and the Court of the World ! Place your signatures under a verdict which will be praised as the beginning of a new Era of Justice and of Peace -- and which will be a bridge of gold leading to a better and a happier future.

(The Tribunal adjourned until Monday 26 August 1946 at 1000 hours.)